

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEVON ENERGY CORPORATION)	NO. 4:21-cv-2452
)	
)	
VS.)	Houston, Texas
)	10:41 a.m.
)	
CHEVRON USA, INC.)	September 5, 2023

FINAL PRETRIAL CONFERENCE
BEFORE THE HONORABLE DAVID HITTNER
UNITED STATES DISTRICT JUDGE

VOLUME 1 OF 1

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1 P R O C E E D I N G S

2 THE LAW CLERK: All rise.

3 THE COURT: Thank you. Be seated. We have a
4 diagram of the attorneys. Let me get -- look at it again.

10:41:00 5 All right. Who is the lead counsel for
6 the plaintiff?

7 MR. JOHNSON: I am, Your Honor. Logan Johnson.

8 THE COURT: Okay. Now, just so I get it
9 straight. Is the signing -- how do you pronounce your name
10 if I need to?

11 MR. SCIME: It's pronounced "shim may," Your
12 Honor.

13 THE COURT: How do you spell it?

14 MR. SCIME: S-C-I-M-E. It's pronounced "shim
10:41:23 15 may."

16 THE COURT: "Shim may"? S-H, like "shim may"?

17 MR. SCIME: It sounds like that, Your Honor,
18 but it's S-C-I-M-E.

19 THE COURT: Okay. And Mr. -- what is it --
10:42:10 20 Rouhandeh? How do you pronounce it?

21 MR. ROUHANDEH: Good morning. Rouhandeh. Row
22 like a rowboat, Honda like --

23 THE COURT: Okay. Hold up. Row, H-A-N --
24 yeah.

10:42:24 25 MR. ROUHANDEH: Honda like the motorcycle.

1 THE COURT: Like the car.

2 MR. ROUHANDEH: I used to say that before there
3 were Honda cars.

4 THE COURT: I remember the Kiser-Frazer and
10:42:38 5 DeSotos. I am dating myself.

6 Okay. You may be seated.

7 MR. ROUHANDEH: Thank you.

8 THE COURT: Getting rid of the other diagrams
9 from my prior trial, which probably gained more publicity
10:43:29 10 than this one. Although, I had a more colorful audience.

11 All right. We are going to get into these
12 pending motions and so forth. Motions in limine,
13 Plaintiff's Number 1 has been agreed to, I understand.

14 All right. Now, I do this over and over
10:43:56 15 again. I probably did it the last time. Plaintiff's
16 motion in limine -- I mean, the plaintiff wants to stop the
17 defendant from going into it. So, I am doing that for my
18 own focus because sometimes you keep going through these.

19 As far as I see, you have got three
10:44:17 20 contested motions in limine. I am going to just -- I am
21 going to listen to the arguments. I may have questions.
22 And then during the first break when I come back in, I'll
23 just read down the list.

24 By the way, with me -- and check with the
10:44:31 25 people that have tried cases in front of me -- a motion in

1 limine is nothing but a limiting motion. It may sound
2 obvious, but that means you approach the bench before
3 you -- what is it -- you go into it.

4 That is kind of like an insurance policy.

10:44:50 5 In other words, don't go into it until you approach the
6 bench.

7 I would say I routinely will set them
8 aside after I hear in context how you want to get it in.

9 Okay? But, if I grant it, when you approach the bench, I
10:45:08 10 will reconsider it, so you can come up. They said, Well,
11 you have got Motion in Limine Number 4, Judge, but now we
12 have heard this evidence. We want you to reconsider this
13 so we can get it in. And if I agree, now that I heard it,
14 I'll reverse it and allow it in.

10:45:26 15 All right. We are going to go short on
16 these things because I have already gone down through this,
17 and read -- uh-oh. That's good to let me know that I have
18 got to turn my own phone off.

19 Okay. Give me a second. Okay.

10:46:16 20 Number 2, this is Plaintiff's Number 2.
21 Number 1 was -- I granted -- I gather -- or is by
22 agreement.

23 MR. JOHNSON: Right.

24 THE COURT: All right. Any evidence -- let's
10:46:27 25 see, do I have the -- yeah. I am going to work from my

1 notes. I have gone through this, and I may refer to the
2 original one here but -- and if my summary is incorrect,
3 let me know.

4 That's any evidence of comment on,
10:46:48 5 reference to, or suggested regarding Devon's disputed legal
6 arguments and contentions advanced in its pending appeal
7 before the Interior Board of Land and Appeals. What is
8 that? That's the -- is that the -- federal, or the state?

9 MR. TABOLSKY: That's the federal agency.

10:47:06 10 THE COURT: Federal agency. All right. Why do
11 you need this?

12 MR. TABOLSKY: Your Honor, our claim is that
13 Chevron failed to defend us in that proceeding. Because
14 they failed to defend us, we're having to defend ourselves,
10:47:20 15 and they're trying, in this case, to use the position we're
16 taking there against us.

17 The Fifth Circuit in the *Continental*
18 *Insurance* case cited in our brief specifically says that's
19 off limits because you can't say we are not going to defend
10:47:34 20 you, and then when it -- when we were fighting over the
21 defense and indemnity obligation, use the fact we defended
22 ourselves against us. To put it in the context of, like,
23 my insurer failed to defend me in a car accident case, and
24 I had to defend myself.

10:47:48 25 THE COURT: All right. What's the defense

1 position?

2 MR. RICE: Your Honor, they have taken the
3 position with the federal government, the same position
4 that we have in this case, and they have made factual
10:47:58 5 assertions to the federal government, which, by the way,
6 they have attached to their complaint in this case.

7 They have made the IBLA pleadings and
8 their position in that pleadings an issue in this case.

9 And they can't run from those factual assertions and those
10:48:12 10 factual assertions are important because it goes directly
11 to what Santa Fe understood back in 1991 when the lease was
12 assigned.

13 THE COURT: Now, remind me, Santa Fe, that's a
14 predecessor?

10:48:22 15 MR. RICE: Right.

16 THE COURT: Of who?

17 MR. RICE: Of Chevron.

18 THE COURT: Got it. Okay.

19 MR. RICE: Of Devon -- I'm sorry, of Devon.

10:48:29 20 THE COURT: Devon.

21 MR. RICE: But the factual assertions that they
22 made to the federal government in the IBLA proceeding goes
23 directly to what Santa Fe understood about this lease when
24 they transferred the lease to Signal Hill and what they
10:48:43 25 understood about the CCA.

1 THE COURT: What's the matter -- what's the
2 matter of law on that, that allows you to get that in?

3 MR. RICE: Well, the same case that
4 Mr. Tabolsky cites, the *Sherman* case -- and cites a whole
10:48:56 5 line of authority that says you can use a parties'
6 pleadings against them, and if they attach their
7 pleadings -- if they attach something to a pleading, it's
8 essentially an admission.

9 Now, in the *Sherman* case, the Fifth
10:49:10 10 Circuit said that case, there were multiple interpleaders
11 and the claims that -- the claims at issue in that case had
12 been dismissed, so the Court said, you can't use those
13 pleadings.

14 THE COURT: So the bottom line is they have it
10:49:23 15 attached to their original complaint in this case?

16 MR. RICE: In this case. Not only that, Judge,
17 but they also gave it to one of their experts who they
18 intend to call to testify in this case. They are also
19 seeking --

10:49:37 20 THE COURT: Is he basing -- you feel he is
21 basing his expert testimony on that?

22 MR. RICE: He said he considered it --

23 THE COURT: Okay.

24 MR. RICE: -- in his deposition.

10:49:44 25 THE COURT: All right. Response. What's the

1 response?

2 MR. TABOLSKY: So a couple things, Your Honor.

3 THE COURT: You can't get pleadings in.

4 MR. TABOLSKY: Pleadings?

10:49:52 5 THE COURT: Yeah, that's what he said. It's
6 attached to your pleadings, isn't it?

7 MR. TABOLSKY: Are you referring to the --

8 MR. RICE: The IBLA position that was attached
9 to the original complaint in this case.

10:50:06 10 MR. JOHNSON: There is a distinction here, Your
11 Honor.

12 THE COURT: Let's make it now. We need to move
13 on.

14 MR. JOHNSON: Okay. Fair enough. Our claim is
10:50:12 15 for defense and indemnity under the subject contract.

16 THE COURT: That is the bottom line. Now --

17 MR. JOHNSON: That's the bottom line.

18 THE COURT: -- I'll ask you this right away. I
19 looked at --

10:50:20 20 MR. JOHNSON: That's the bottom line.

21 THE COURT: Hold it. I looked at the jury
22 charge. Are you asking for any certain dollar amount?

23 MR. JOHNSON: Yes.

24 THE COURT: Where?

10:50:28 25 MR. JOHNSON: In the cost of defense --

1 THE COURT: I know that, but where is it?

2 MR. JOHNSON: -- we have incurred.

3 THE COURT: Do you have a question for the jury
4 on that?

10:50:36 5 MR. TABOLSKY: Yes, Your Honor. We have a
6 question: What are our fees in the IBLA proceeding?
7 Because we have incurred them --

8 THE COURT: Okay.

9 MR. TABOLSKY: -- they didn't defend us.

10:50:44 10 THE COURT: You actually have a dollar amount,
11 answer in dollar and cents, if any --

12 MR. TABOLSKY: Yes.

13 THE COURT: -- attached to your requested jury
14 charge?

10:50:52 15 MR. TABOLSKY: Yes, I believe it's question 3.

16 THE COURT: Check -- all right. You got a copy
17 of it?

18 MR. JOHNSON: And the IBLA appeal is attached
19 to our complaint simply to establish that a claim was made.

10:51:16 20 MR. TABOLSKY: Yes, Your Honor.

21 THE COURT: All right. So your position is
22 what?

23 MR. JOHNSON: The IBLA appeal is attached to
24 the complaint simply to establish that a claim was made.

10:51:26 25 They don't get to get into the substance of legal arguments

1 being made that frankly are on their behalf. They should
2 be doing --

3 THE COURT: Well, let me ask you this. What if
4 the defense says, Well, you have one of your witnesses on
10:51:37 5 there, a corporate representative or whatever, and say,
6 Look at this last page of your pleading, what does that
7 mean?

8 MR. JOHNSON: I think that's improper, and I'll
9 let Mr. Tabolsky expand on that.

10:51:49 10 THE COURT: How is that improper if it is
11 attached to your -- you know, to your complaint?

12 MR. TABOLSKY: Because as my colleague
13 Mr. Johnson said, we put it there just to show that we
14 filed the appeal and there's this proceeding. That doesn't
10:52:02 15 mean, we need to bring this entire brief, which has all
16 these factual assertions, and more importantly the legal
17 arguments and contentions we're making there, which haven't
18 been decided yet. That appeal is still pending.

19 THE COURT: How about the hasn't been decided
10:52:17 20 yet? Hasn't been decided yet?

21 MR. RICE: That's right. And we are not
22 talking about legal theories. We are talking about factual
23 assertions that they have made to the federal government in
24 this IBLA proceeding. And they shouldn't be able to run
10:52:27 25 from those, but they don't want this jury to hear the

1 factual statements, the position they have taken, with the
2 federal government.

3 THE COURT: That is different than what, what
4 they are here on?

10:52:37 5 MR. RICE: Right. They have taken a completely
6 different position, Judge.

7 THE COURT: Okay.

8 MR. JOHNSON: It is not factual assertions.
9 It's about the subject regulations, and what they're trying
10:52:45 10 to do is turn this trial into a circus where we have a mini
11 trial --

12 THE COURT: Oh, I -- oh, wait, hold it. I
13 know. I have done a lot of these well-capping cases. Most
14 of them on offshore Louisiana, having to apply some of that
10:52:57 15 Louisiana law. Okay?

16 So, I have done this before. I understand
17 these type of cases up to the point of managing them. So I
18 understand what you're saying, and I will get you a ruling
19 on that.

10:53:14 20 MR. JOHNSON: Thank you.

21 THE COURT: All right. The next one is
22 Number 3. Comment on, reference to, or suggestion that any
23 parties' interrogatory responses made while discovery was
24 ongoing when such response was something on the amended or
10:53:29 25 supplemented --

1 Now, these are the ones that are objected
2 to. Okay? Why do you object?

3 MR. RICE: Judge, I think that we actually made
4 an agreement on that at the last hearing.

10:53:39 5 MR. TABOLSKY: We did.

6 THE COURT: Okay. All right. Granted by
7 agreement?

8 MR. TABOLSKY: Granted as modified by
9 agreement.

10:53:44 10 THE COURT: All right. What's the
11 modification? Just read it into the record.

12 MR. RICE: Do you have it?

13 MR. TABOLSKY: I don't think I do.

14 THE COURT: Granted -- hold. Granted by
10:53:53 15 agreement as in record. What's the --

16 MR. TABOLSKY: The substance was Chevron
17 originally moved in limines based -- saying -- trying to
18 preclude us from talking about certain things based on
19 interrogatory responses.

10:54:07 20 THE COURT: Right.

21 MR. TABOLSKY: We pointed out that they have
22 been amended and supplemented and they conceded and agreed
23 that --

24 THE COURT: So what's your agreement? Do you
10:54:14 25 agree with that?

1 MR. RICE: We're --

2 THE COURT: Whatever he said. When I said what
3 are you -- by agreement, I just want it in the record.

4 MR. RICE: I understand, Judge, and I think
10:54:25 5 we -- I'm almost certain we made it on the record at the
6 initial pretrial conference.

7 MR. TABOLSKY: Yes.

8 MR. RICE: And I am happy to go back and look
9 at it.

10:54:32 10 THE COURT: Okay. I don't have those notes.
11 Do you have those notes? I haven't got those notes.

12 Did you bring them in?

13 THE LAW CLERK: I will check, sir.

14 THE COURT: Because I know I made some short
10:54:41 15 notes on this.

16 THE LAW CLERK: I'll go get it.

17 THE COURT: We got plenty of time. I have one
18 criminal matter. I have a sentencing, hotly contested, I
19 understand, at -- what is it -- at 1:30. Some guy who has
10:55:04 20 been working -- and, again, this is -- it will be on the
21 public record. The guy was a fence for some high-end
22 stuff, and he apparently had been working with the
23 government for a while. So, everybody wants a lower
24 sentence, so we will see what happens.

10:55:21 25 MR. JOHNSON: Your Honor, to move things along,

1 I think the agreement is on the record from the last
2 hearing so we will find that. You can move on to other
3 matters, if that speeds things up.

4 THE COURT: Okay. Might as well wait.

10:55:31 5 MR. JOHNSON: Okay.

6 THE COURT: Take about a minute or so.

7 MR. JOHNSON: No problem.

8 THE COURT: I made it before. I don't want to
9 have to do it again.

10:56:12 10 There we go. Okay. Yeah, here it is,
11 granted by agreement. Okay. I'm just going to put that
12 down. I am going to leave this -- I am talking to my
13 clerk. I am going to leave this on the side so I -- don't
14 confuse me.

10:56:28 15 The next one, Number 4, any reference to
16 extrinsic evidence regarding a nonreasonably susceptible
17 meeting to a contract. Plaintiff contends while extrinsic
18 evidence is admissible in some circumstances, such as to
19 prove a party's conduct consistent with a contract, plain
10:56:49 20 meaning, extrinsic evidence -- let's see, to vary,
21 contradict, alter the plain meaning -- well, okay. We
22 understand basic contract law.

23 What's that about?

24 MR. YEGPARIAN: Your Honor, the contract that's
10:57:04 25 the basis of this lawsuit has an indemnity provision with

1 exceedingly broad expansive language.

2 THE COURT: A lot of these -- a lot of these
3 motions in limine are exceedingly broad. So if I deny
4 them -- I have gone through them. A lot of them are
10:57:19 5 exceedingly broad.

6 MR. YEGPARIAN: Understood.

7 THE COURT: All right. But go right ahead.

8 MR. YEGPARIAN: The -- the language in the
9 indemnity speaks to all claims being indemnified, claims
10:57:31 10 known or unknown, claims reflected on the books and
11 records, so on and so forth.

12 Chevron intends on introducing evidence,
13 for example, from one of their experts that the liability
14 for decommissioning is not reflected on Santa Fe's books
10:57:47 15 and records. Now, California law gives some leeway as to
16 extrinsic evidence, but there is a line, and that line is
17 Chevron cannot introduce evidence that contradicts, varies,
18 or alters the plain meaning of the contract. So with this
19 one example --

10:58:03 20 THE COURT: What about -- what about the
21 ordinary understanding in the course of business of the oil
22 and gas industry?

23 MR. YEGPARIAN: Absolutely. And so --

24 THE COURT: Can they testify to that?

10:58:13 25 MR. YEGPARIAN: I believe so. I think that

1 there's a line to be drawn where you can talk about the
2 under -- the parties' understanding and the parties'
3 intent, but if you're putting on evidence saying it is not
4 on your books and records, therefore, there is no
10:58:26 5 indemnity, that crosses a line because that is directly
6 contrary --

7 THE COURT: To what?

8 MR. YEGPARIAN: To the plain language of the
9 indemnity.

10:58:33 10 THE COURT: Okay. Let me hear the other side.

11 MR. RICE: It just shows what the parties
12 understood at the time, Judge.

13 THE COURT: What?

14 MR. RICE: That -- his own example. They want
10:58:41 15 to prevent Chevron from putting on evidence that the
16 liabilities at issue were not reflected on Santa Fe's books
17 and records. Now --

18 THE COURT: The what? Say -- repeat it again.

19 MR. RICE: So -- so --

10:58:53 20 THE COURT: They want to show what?

21 MR. RICE: They want to prevent Chevron from
22 offering evidence that the liabilities at issue here were
23 not reflected on Santa Fe's books and records. And our
24 point is the fact that they were not reflected on the books
10:59:06 25 and records goes to what Santa Fe understood at the time.

1 That they had already -- they had already assigned those
2 obligations away. They had no obligation.

3 So, it's not varying the terms of the
4 contract. We are saying this is evidence of what Santa Fe
10:59:22 5 understood the contract to mean.

6 THE COURT: Or the absence thereof?

7 MR. RICE: Right.

8 THE COURT: All right. Response.

9 MR. YEGPARIAN: Your Honor, it absolutely is
10:59:29 10 trying to change what the parties agreed to, what their
11 intent was in the agreement.

12 THE COURT: Well, there're two -- there are two
13 aspects. Intent by who? Intent to -- as to the usual
14 transaction within the industry or what was actually in the
10:59:45 15 agreement?

16 MR. YEGPARIAN: What was actually in the
17 agreement.

18 THE COURT: How so?

19 MR. YEGPARIAN: Because the agreement speaks to
10:59:51 20 indemnity and defense for all liabilities whether accrued,
21 contingent, known or unknown, and whether or not reflected
22 on the books and records of Santa Fe. And now they are
23 going to try and put on evidence that says, because the
24 liability was not reflected on Santa Fe's books and
11:00:07 25 records, we don't owe you indemnity. That is 180 degrees

1 contrary to what the contract says. And that's -- that's
2 the line.

3 They can put on evidence as to the
4 parties' understanding and intent. That is allowed under
11:00:20 5 California law, but there is a line, and that line is when
6 they're putting on evidence that says this liability was
7 unknown, therefore, we don't --

8 THE COURT: Slow down.

9 MR. YEGPARIAN: I apologize.

11:00:29 10 THE COURT: Go on.

11 MR. YEGPARIAN: There's a line where if they
12 put on evidence that says, this liability was unknown, and,
13 therefore, we don't owe you indemnity or this liability
14 wasn't on your books and records and, therefore, we don't
11:00:40 15 owe you indemnity, that's contrary to the parties'
16 agreement in the contract.

17 THE COURT: In the contract?

18 MR. YEGPARIAN: Yes, sir.

19 THE COURT: And you can point out -- so is
11:00:50 20 there a conflict within the contract?

21 MR. YEGPARIAN: Sorry, Your Honor, is
22 there a --

23 THE COURT: Is there a conflict within the
24 agreement?

11:00:59 25 MR. YEGPARIAN: No, Your Honor.

1 THE COURT: It's just -- what is it? Doesn't
2 show anything?

3 MR. YEGPARIAN: I --

4 THE COURT: No. I'm sorry. Go back to the
11:01:06 5 point again. Why -- why do you want to stop them? Well,
6 you say reference to any extrinsic evidence regarding a not
7 reasonably susceptible meaning.

8 What does that mean?

9 MR. YEGPARIAN: What that means is if they are
11:01:21 10 going to put on evidence, for example, from their expert
11 that the liability is not reflected on Santa Fe's books and
12 records, that is not -- that is an interpretation of the
13 contract. That is evidence as to the parties' intent that
14 is opposite what the contract says.

11:01:37 15 THE COURT: Well, it's -- you say it's not
16 reflected on the books and records?

17 MR. YEGPARIAN: Yes, Your Honor.

18 MR. JOHNSON: If I may, Your Honor?

19 THE COURT: Please.

11:01:44 20 MR. JOHNSON: The contract is exceedingly clear
21 that we're owed indemnity for any costs, liabilities,
22 et cetera, whether known or unknown, and whether or not
23 reflected on the books and records of Santa Fe. That is a
24 quote from the contract.

11:02:01 25 THE COURT: From -- all right. Response to

1 that.

2 MR. JOHNSON: The contract reflects the
3 parties' understanding.

4 MR. RICE: Judge, if -- if the contract was
11:02:07 5 exceedingly clear, I suppose we wouldn't be here in this
6 position. But at any rate, that is for the jury to decide.

7 THE COURT: To decide what?

8 MR. RICE: The -- the issue is, what -- what
9 did Santa Fe understand? In 1991, it sold off these
11:02:24 10 leases, assigned these leases to Signal Hill, and then in
11 1996 it entered into the CCA with Monterey. And the
12 question is: What did it understand its obligations to be
13 vis-à-vis those leases?

14 And at the time Santa Fe -- and frankly,
11:02:41 15 this is what they told the IBLA.

16 THE COURT: Is it in the contract anywhere, or
17 is that where your extrinsic -- what did you believe when
18 you signed the contract?

19 MR. RICE: Right. What did you understand your
11:02:50 20 obligations to be in 1996 --

21 THE COURT: What about --

22 MR. RICE: -- when you assigned -- when you
23 entered into the CCA with Monterey? And they understood
24 that they had no obligations, and that's reflected by the
11:02:59 25 fact that their -- their books and records, there is no

1 obligations for P&A on these wells and --

2 THE COURT: Okay. Now, the plaintiff's
3 position, should it have been in writing?

4 MR. YEGPARIAN: It is in writing.

11:03:07 5 THE COURT: They say it is not there.

6 MR. YEGPARIAN: It is.

7 THE COURT: But what was their understanding?
8 Where does the extrinsic evidence come in relative to
9 something that was not in -- in the written agreements?

11:03:18 10 MR. YEGPARIAN: So, and it -- Your Honor, it is
11 in the agreement.

12 THE COURT: Where?

13 MR. YEGPARIAN: In 3 point -- in the definition
14 of assumed liabilities, which is in Section 1.1 of the
11:03:28 15 contract, which we have been reading.

16 THE COURT: Go on.

17 MR. YEGPARIAN: And that provision says, "All
18 liabilities known, unknown, contingent, and whether or not
19 reflected on the books and records."

11:03:40 20 THE COURT: Okay. Now, all right. How do you
21 get around that? That is pretty broad.

22 MR. RICE: Well, again, it goes to -- it goes
23 to what they understood at the time, and they understood at
24 the time --

11:03:54 25 THE COURT: Not with --

1 MR. RICE: They had no obligations.

2 THE COURT: Not with --

3 MR. RICE: There were no obligations.

4 THE COURT: Notwithstanding that phrase?

11:04:00 5 MR. RICE: Yes, sir.

6 THE COURT: Okay. Got it. Understand it.

7 That's all I can say.

8 MR. YEGPARIAN: The only thing I would add,

9 Your Honor, is the words of the contract are what matter.

11:04:09 10 The subjective intent, the understandings, are reflected in
11 the agreement. And as the Court correctly noted --

12 THE COURT: I understand. Got it.

13 Yes, sir.

14 MR. JOHNSON: It makes that extrinsic evidence

11:04:18 15 completely irrelevant.

16 THE COURT: See. But that would be a

17 determination I would have to make later on because it says

18 here, any reference to any extrinsic regarding a non --

19 what is it -- a nonreasonably susceptible meaning. There

11:04:35 20 is a lot of, you know, words where you can try to drive a
21 truck through that. I understand as far as the wording
22 goes, but I got it.

23 The next one. Now, we go to the -- let's

24 see. Yeah, the defendant's motion in limine. You got nine

11:04:53 25 of them.

1 This is about Number 1 on page 1, Cole --
2 David Hicks, former general counsel. And you say he
3 admitted in his deposition he played no role whatsoever in
4 the parties' negotiation.

11:05:15 5 All right. Now, so the defense, right --
6 you're the defense.

7 MR. BLOCK: Yes, Your Honor.

8 THE COURT: All right. Want to stop them from
9 going into it, right?

11:05:25 10 MR. BLOCK: Correct, Your Honor.

11 THE COURT: The plaintiff. What is your
12 position here? Why should they not be able to go into it
13 with Hicks?

14 MR. BLOCK: Thank you, Your Honor. Micah Block
11:05:33 15 for Chevron.

16 This is narrowly drawn to testimony we
17 expect them to attempt to put on for Mr. Hicks interpreting
18 the contract.

19 THE COURT: You said it -- in the deposition,
11:05:46 20 he had no role whatsoever, correct?

21 MR. BLOCK: He did not play a role in the
22 negotiation. He said that he --

23 THE COURT: Negotiations.

24 MR. BLOCK: He withdrew -- he reviewed drafts,
11:05:55 25 but he does not recall or could not testify to any

1 communication with the other side.

2 And so the line that we have been talking
3 about for extrinsic evidence, if you want to have somebody
4 who was around at the time talk about the contract, there
11:06:10 5 is law that says, if you recall discussions --

6 THE COURT: Who says? What says? The law
7 says?

8 MR. BLOCK: Correct, California cases, Your
9 Honor.

11:06:18 10 THE COURT: Okay, go on.

11 MR. BLOCK: That says if you had a discussion,
12 a contemporaneous discussion with the other side, that's an
13 expressed communication at the time, that may be relevant
14 to the contract interpretation, but your own subjective
11:06:33 15 understanding, not expressed to the other side, isn't
16 relevant to interpreting the contract.

17 THE COURT: What is he going to testify to?

18 MR. BLOCK: Well, Your Honor, our expectation,
19 based on the way his deposition was taken, is that they
11:06:47 20 will ask him to say here is this part of the CCA, and here
21 is what it meant. That is not testimony that is going to
22 be helpful to the jury. Now --

23 THE COURT: How about in the field? I mean,
24 again, the reasonably accepted meaning within the oil and
11:07:03 25 gas industry.

1 MR. BLOCK: I am not sure that Mr. Hicks has
2 been designated to give, sort of, expert opinion or that he
3 addresses that matter, but this motion is drawn very
4 narrowly to his testimony purporting to interpret clauses
5 of the CCA, where he has said he didn't participate in
6 negotiations.

11:07:14

7 So the factual predicate for that
8 testimony would be that it is something that he expressed
9 to the other side at the time. Because he doesn't say, I
10 expressed this to the other side, or this was part of the
11 negotiation, it is just his own subjective interpretation.

11:07:27

12 And, in fact, the record would show, Your
13 Honor, that it's an interpretation he didn't come up with
14 until this litigation, because he says he wasn't thinking
15 about the issues in this case back in 1996.

11:07:42

16 THE COURT: Okay. Response.

17 MR. JOHNSON: That's simply not true. David
18 Hicks was the general counsel of Santa Fe during the
19 relevant transaction. He testified that he reviewed every
20 draft. He hired outside counsel, Andrews Kurth, interacted
21 with them to make sure the contract achieved the purposes
22 of the transaction.

11:08:01

23 He -- he testified very clearly to the
24 purpose of the transaction. And he testified that if he
25 had -- he testified very clearly that the contract was

11:08:18

1 consistent with his understanding of the purpose of the
2 transaction.

3 He was the head lawyer. He had been at
4 Santa Fe for 11 years at the time of this transaction. The
11:08:36 5 basis on which they sought a continuance was Mr. Whaling,
6 who had been at the company one year before this
7 transaction, and they want him to come in and talk about
8 the contract.

9 David Hicks is exceedingly qualified to
11:08:46 10 address these topics. He was the head of the legal
11 department. He interacted with counsel who was negotiating
12 the CCA. He testified that he reviewed every draft of the
13 CCA.

14 THE COURT: Hang on a second. I am making a
11:09:11 15 note.

16 MR. JOHNSON: And then I'll turn it over to
17 Mr. Tabolsky to make the smart points.

18 THE COURT: What have you got now,
19 Mr. Tabolsky?

11:09:19 20 MR. TABOLSKY: I will just pick up where
21 Mr. Johnson left off.

22 Not only did Mr. Hicks testify in his
23 deposition he reviewed every draft, he also said he
24 approved every draft as the negotiations went back and
11:09:28 25 forth.

1 THE COURT: Who did the actual negotiations?

2 MR. TABOLSKY: Outside counsel at Andrews

3 Kurth, just like anybody. Under their argument, only the
4 outside lawyers who made the statements themselves. But to

11:09:40 5 suggest that Mr. Hicks was not knee deep in this, he was
6 also the person who approved the final draft before Santa
7 Fe signed it, and he -- he was part and parcel.

8 In *Onyx v. Bayer*, California law, makes
9 clear you don't have to recall specific conversations.

11:09:56 10 THE COURT: I got it.

11 Mr. Block.

12 MR. BLOCK: Sure.

13 THE COURT: Again, play devil's advocate.

14 Listening to that, doesn't it go to the weight, not to the
11:10:08 15 basic admissibility, where the jury gives it whatever
16 weight they think it will have after you get through with
17 cross-examination?

18 MR. BLOCK: No, Your Honor.

19 THE COURT: Why?

11:10:16 20 MR. BLOCK: And this is why. I think

21 Mr. Johnson sort of gave it up when he explained what

22 Mr. Hicks is going to testify to. Because he said that

23 Mr. Hicks's testimony will be that he had a purpose in

24 mind, and he went and talked to outside counsel about it,

11:10:30 25 and he thinks the deal reflects the purpose that he had in

1 mind.

2 The law on this point is very clear.

3 THE COURT: Which is?

4 MR. BLOCK: Your subjectively held purpose or

11:10:40 5 intent is not relevant to interpretation of the contract,
6 and allowing him to give that testimony to the jury would
7 be unduly prejudicial.

8 Now, if he had -- could testify that that
9 purpose was expressed in a conversation, or that he had

11:10:56 10 told outside counsel, and he was aware of that, we might
11 have hearsay issues. The point is that he cannot give that
12 testimony. And I want to cite a couple of quotes from his
13 deposition.

14 This is at Document 88-13, around pages 60

11:11:11 15 to 61. Mr. Hicks says, "If there was any type of
16 negotiation, oral negotiation between the parties, I was
17 not involved in that. I did read every draft and, you
18 know, approved the final document."

19 Next at pages 66 to 67 of his -- of the

11:11:32 20 PDF, so the -- sorry, I am going to give you transcript
21 cites, 46:25, to 47:7.

22 THE COURT: Slow down.

23 MR. BLOCK: Sorry.

24 THE COURT: Court reporter needs to get it

11:11:42 25 down.

1 MR. BLOCK: I apologize, Ms. Miller.

2 THE COURT: We are not doing appellate argument
3 here. You can state it, but you need to talk to me about
4 it.

11:11:49 5 MR. BLOCK: Fair enough, Your Honor. I just
6 wanted the record to be there in case you needed to go
7 back. So let me give you the testimony again, and this is
8 all in the transcript.

9 The next point that he said in his
11:11:58 10 deposition:

11 "Question: Did you personally participate
12 in any negotiations with Monterey regarding the CCA?

13 "Answer: I don't remember."

14 Next question he testified: "I didn't
11:12:12 15 have a lot of involvement in the CCA agreement, and it was
16 drafted by Andrews Kurth."

17 THE COURT: Okay. Got it.

18 The next one, Number 2, on page 5. This
19 is the one that you even cite Rule 403, relative to
11:12:31 20 excluding testimony from Devon's attorney experts, plural,
21 Andrew Adams and Michael Farber.

22 And you are saying that they have done
23 nothing more than provide improper contract interpretation
24 and legal conclusions, including by proposing that this is
11:12:53 25 for -- when I read it first, "including by proposing to

1 tell the jury, the meaning or effect of the CCA, the
2 assets, liabilities, and risks that were not transferred as
3 part of the CCA, the parties' obligation, and whether any
4 entity has breached it."

11:13:12 5 And that was citing their Rule 26 reports,
6 and during their deposition.

7 All right. Tell me about that. First of
8 all, how does it go -- come up to Rule 403?

9 MR. BLOCK: Well, it's -- Rule 403, I think in
11:13:28 10 a way that is related to the concerns that animate Daubert,
11 Your Honor. So the point is that it would be unfairly
12 prejudicial to us to permit them to put an attorney on the
13 stand, sworn and purported to be qualified as an expert, to
14 simply give their contract interpretation.

11:13:45 15 And this is a ruling you have given, Your
16 Honor, in the *Morris against Equifax* case, the *Petrobras*
17 *against Vicinay Cadenas* case --

18 THE COURT: Wow. Petrobras goes back a ways.

19 MR. BLOCK: Yes, 2019, I believe, Your Honor,
11:13:59 20 the one that I have cited.

21 THE COURT: Oh, okay. I have had a number with
22 them.

23 MR. BLOCK: That doesn't surprise me, Your
24 Honor.

11:14:06 25 The point is simply this: It is well

1 established that you can't have an attorney get up and tell
2 a jury what a contract means. And so if you look at the
3 places in their report that we have cited in the brief, if
4 you look at the excerpts of their testimony, that's
5 substantially all that these experts do.

11:14:19

6 I think as you read the briefs on this,
7 the other side concedes that they cannot have their experts
8 testify to the meaning of the contract. Our point is
9 simply, there's nothing left. So if there were a proffer
10 from the other side of what these experts -- what remains
11 from their --

11:14:35

12 THE COURT: You mean like an offer of proof?

13 MR. BLOCK: Exactly right. We would be happy
14 to look, but I don't think there is anything there except
15 for their contract interpretation.

11:14:45

16 THE COURT: Okay. Response. What are they --
17 now, these -- are lawyers that were not in on the case,
18 correct?

19 MR. YEGPARIAN: Yes, Your Honor.

11:14:55

20 THE COURT: Okay. And what are they, oil and
21 gas lawyers?

22 MR. YEGPARIAN: One is a lawyer who was
23 formerly with the federal agency that is issuing the
24 decommissioning order at issue here.

11:15:05

25 THE COURT: All right.

1 MR. YEGPARIAN: And the other is an oil and gas
2 lawyer.

3 First, these are the exact same arguments
4 the Court considered and rejected with Chevron's Daubert
11:15:16 5 motion. That's one. Two, is that they are not
6 interpreting the contract. That is just wrong. They are
7 offering custom and practice evidence, which the Court
8 indicated earlier is admissible.

9 So with Mr. Adams, who is an oil and gas
11:15:29 10 lawyer, he is going to testify to the business -- the
11 custom and practice of offshore corporations, or oil and
12 gas companies, and how they structured their transactions.
13 He is not going to get into the contract. He is not going
14 to interpret what the words mean or don't mean.

11:15:43 15 Mr. Farber, who is a regulatory attorney,
16 who is formally with the -- BSEE, the agency, is going to
17 come in and testify to custom and practice, with respect to
18 how corporations deal with regulatory liabilities. They
19 are not getting into the contract. They are not.

11:16:00 20 THE COURT: So, isn't this a contract matter?

21 MR. YEGPARIAN: It is a contract matter.

22 THE COURT: When you boil it down, it's a
23 breach of contract matter.

24 MR. YEGPARIAN: Yes, Your Honor.

11:16:09 25 THE COURT: So what are these guys going to

1 basically -- what are they calling them for?

2 MR. YEGPARIAN: So under California law, which
3 is what we're working with --

4 THE COURT: Right.

11:16:17 5 MR. YEGPARIAN: -- extrinsic evidence is
6 admissible to --

7 THE COURT: Right. Well, it is in most of
8 these up to a point.

9 MR. YEGPARIAN: Absolutely.

11:16:22 10 THE COURT: And as what we said earlier on, up
11 to a point.

12 MR. YEGPARIAN: Absolutely. And so because
13 these experts are testifying to the custom and practice
14 that will contextualize and explain a relatively involved
11:16:32 15 transaction to the jury, these opinions don't cross the
16 line. They don't.

17 And if the line is going to be drawn where
18 we can't have experts who are lawyers get up and testify,
19 that cuts both ways. They are going to have a regulatory
11:16:47 20 lawyer get up and offer an opinion as to the state of the
21 regulations and how that impacts the contract.

22 THE COURT: Can't you reach an agreement,
23 though, trade one for the other? Can you --

24 MR. YEGPARIAN: I would be happy to have that
11:16:59 25 conversation to see if we could reach an agreement.

1 THE COURT: I'm just saying. It may -- it may.
2 I haven't heard what is coming next because a lot of these
3 other objections the other side has is -- it was objection
4 to evidence, but really, they're motions in limine. So, I
11:17:15 5 can get to that. That's why I am making it a habit in the
6 same format that I use with limine motions.

7 MR. YEGPARIAN: Yeah. But these, I think,
8 function like motions to exclude.

9 THE COURT: So your position is it cuts both
11:17:25 10 ways?

11 MR. YEGPARIAN: In part, but --

12 THE COURT: Oh? Well, how is it in part?

13 MR. YEGPARIAN: Because before getting to it
14 cutting both ways, the scope of these experts' opinions are
11:17:35 15 not what Chevron says. They are not interpreting the
16 contract. They are not going to construe terms one way or
17 another. They are going to testify to custom and practice,
18 which the cases we have cited in our briefing under
19 California law is perfectly admissible.

11:17:48 20 THE COURT: Okay. Response, Mr. Block.

21 MR. BLOCK: Your Honor, here is a quote from
22 one of them. Quote -- this is the Rule 26 report. "Under
23 the CCA all of the liabilities associated with the subject
24 assets were assumed by Monterey. This includes all
11:18:07 25 liabilities arising under the Signal Hill PSA."

1 So I simply commend to Your Honor the
2 Rule 26 report, which is in the record, and is very thin in
3 this case for each of them. And if you look at that as
4 quoted in our brief and as stated in -- plainly in that
5 document, which again is attached to this MIL briefing,
6 what they do is tell the jury whether or not Devon wins
7 under the contract. That's their opinions.

11:18:26

8 Now, as to the whether it goes both ways
9 point, our experts are distinguishable because they do not
10 offer the opinion -- the jury opinions on the meanings of
11 the contract, and you will see in their reports that their
12 opinions are confined to industry practice and the like.

11:18:44

13 So it is not an equivalence, Your Honor.

14 THE COURT: Okay. You want to respond, then we
15 will move on?

11:18:59

16 MR. YEGPARIAN: Their opinions aren't -- they
17 are not going to opine on the meaning of the contract. As
18 I have indicated -- I won't belabor the point -- they are
19 going to testify to custom and practice. So we need not
20 get into that --

11:19:12

21 THE COURT: Well, you know, if the -- if,
22 indeed, any of these lawyers get on and they get out of
23 bounds, I mean, off they go. Off they go from the witness
24 stand; in other words, you can say, Hey, I'm -- the Judge
25 is assumed to know the law.

11:19:29

1 MR. YEGPARIAN: Absolutely.

2 THE COURT: Okay. Whether we do or not, that's
3 up to the attorneys very often to teach us the law --

4 MR. YEGPARIAN: Absolutely.

11:19:37 5 THE COURT: -- in every particular case, but
6 you put a witness on the stand, and I know they're getting
7 into know the law concept, then I am going to jump in
8 myself.

9 MR. YEGPARIAN: Absolutely. And they are
11:19:46 10 not -- they are going to testify to custom and practice.

11 THE COURT: I am not saying they are going on
12 or not, but I understand it. Okay?

13 MR. BLOCK: And I would simply say, Your Honor,
14 I don't think there is anything left. And so if we're
11:19:56 15 agreed to the principle that they can't testify to the
16 contract, then --

17 THE COURT: They can't testify --

18 MR. BLOCK: That they cannot present contract
19 interpretation, there is nothing left in their disclosed
11:20:08 20 opinions.

21 THE COURT: Okay. Are they getting into
22 contract interpretation?

23 MR. YEGPARIAN: No, Your Honor. None.

24 THE COURT: All right. We are going to leave
11:20:14 25 it right there. I will make a ruling. But with -- I guess

1 there are two lawyers coming on the plaintiff's side, one
2 on the defense side. Don't underestimate me for saying you
3 can now step down and call your next witness, okay?

4 I did that in the last case I had with a
11:20:33 5 psychiatrist. I sat down, and he has no background, and
6 then I said, You can leave, Doctor, looking at me. Thank
7 you very much for your service.

8 Okay. All right.

9 MR. JOHNSON: Your Honor, I thought you were
11:20:51 10 about to say you had a --

11 THE COURT: What?

12 MR. JOHNSON: I thought you were about to say
13 you had a lawyer expert in your twerking case of last week.

14 THE COURT: No, that was -- no. Not a lawyer.

11:20:58 15 I had someone actually get down and start twerking. Oh,
16 yeah. Oh, yeah. Actually, I really did. And then the
17 next guy they got on was a vet -- was a -- a gay man who
18 was in the military, and the first thing he says, Judge, I
19 am not going to be doing a dance for you. I said, thank
11:21:17 20 you very much. It was quite a case.

21 All right. Now, let's see. Chevron,
22 again -- okay. We're at Number 3, preclude any witness
23 qualified by the Court as an expert from offering testimony
24 reflecting any opinion that has not been disclosed in the
11:21:36 25 witness report or deposition.

1 Any problem with that?

2 MR. YEGPARIAN: In theory, no. I just don't
3 understand what Chevron's getting at in terms of what this
4 applies to.

11:21:47 5 THE COURT: Well, what does it apply to,
6 Counsel?

7 MR. BLOCK: Well, it is exactly as stated.

8 THE COURT: That's what I thought. Next one.
9 I am looking at them. I went over them before.

11:22:02 10 Let's see, Number 4, request to preclude
11 plaintiff from offering any undisclosed evidence regarding
12 Devon's alleged damages.

13 Any problem with that one?

14 MR. YEGPARIAN: As this motion in limine is
11:22:15 15 worded, yes.

16 THE COURT: What?

17 MR. YEGPARIAN: Because it -- it veers off from
18 a motion in limine about undisclosed damages and becomes a
19 motion to exclude Roy Hathcock, who is a nonretained
11:22:27 20 expert. He works for Devon as a consultant. And he's
21 consulting on the decommissioning liabilities from an
22 operational standpoint.

23 THE COURT: Well, again, the request -- I'll
24 read the whole thing, and this is the way I boiled it down:
11:22:42 25 "Request to preclude plaintiff from offering any

1 undisclosed evidence regarding Devon's alleged damages."

2 How do you get around that? What's the
3 problem with that?

4 MR. YEGPARIAN: The problem is that that is
11:22:57 5 going -- as written, it is going to be applied to exclude a
6 witness who is going to testify to relevant information.

7 MR. JOHNSON: Well --

8 MR. YEGPARIAN: An important context for the
9 jury.

11:23:07 10 MR. JOHNSON: The finer point --

11 THE COURT: Yeah.

12 MR. JOHNSON: -- which is as written, it could
13 be fine, but we need to get a better understanding. It
14 should not --

11:23:14 15 THE COURT: Like what?

16 MR. JOHNSON: Well, this is a big deal.
17 Decommissioning is a very expensive process.

18 THE COURT: I understand that. What --

19 MR. JOHNSON: We're entitled to bring --

11:23:22 20 THE COURT: What does it cost per day
21 because I --

22 MR. JOHNSON: Per day, I don't know, but the
23 total liability is well in excess of 300 million currently,
24 and that is going to go up over the next ten years.

11:23:33 25 THE COURT: Because that's what surprised me

1 about how expensive it is per day for use of that
2 equipment --

3 MR. JOHNSON: Right.

4 THE COURT: -- whether it is on a -- on a
5 platform-type deal or with --

11:23:41

6 MR. JOHNSON: Right.

7 THE COURT: -- one of these ships that go out.

8 MR. JOHNSON: And so it is important to
9 contextualize the indemnity we're seeking for the jury.

11:23:53

10 It's not one dollar -- we are not fighting over one dollar.
11 We are not fighting over \$2.00. We are not seeking those
12 costs right now as damages, but certainly we can have
13 someone contextualize decommissioning.

14 THE COURT: Mr. Block?

11:24:06

15 MR. BLOCK: Well --

16 THE COURT: Explain it. It seems pretty clear.

17 MR. BLOCK: My motion, Your Honor?

18 THE COURT: Yeah. It seems pretty clear, but
19 you hear their concerns.

11:24:13

20 MR. BLOCK: I think the motion is clear, Your
21 Honor. So I would answer in two ways. First of all, if
22 they thought it was important to put whatever this
23 contextual evidence is on, they should have disclosed,
24 given us an expert disclosure. And if you look at the
25 entire scope of the disclosure for Mr. Hathcock, which we

11:24:29

1 can hand up if the Court doesn't have it, he just says I am
2 going to talk about damages and its topics only. And so we
3 have cited the case of *Tolan against Cotton* --

4 THE COURT: No. Okay. Go on. How much --

11:24:45 5 MR. BLOCK: That's the disclosure.

6 THE COURT: Let me ask you this: The
7 plaintiff, you're up front, you are talking to the jury
8 right now in summation, okay? How much money are you going
9 to be asking them for?

11:24:55 10 MR. YEGPARIAN: In terms of the specific
11 amount, we're asking for the amount of Devon's attorneys'
12 fees.

13 THE COURT: Approximate -- just attorneys'
14 fees?

11:25:05 15 MR. YEGPARIAN: That's the specific -- in terms
16 of a quantum of damages, specific sum, attorneys' fees.
17 But as Mr. Johnson was saying, the scope of these
18 liabilities is enormous. The Court knows that. And all
19 Mr. Hathcock is going to testify to, which was disclosed in
11:25:20 20 the disclosure that they have --

21 THE COURT: Okay.

22 MR. YEGPARIAN: -- is as to the process of
23 decommissioning, its extent, time, cost, and he said all of
24 that in his deposition, which they took.

11:25:31 25 THE COURT: That doesn't mean it's admissible

1 at trial, though.

2 MR. YEGPARIAN: Absolutely not, but it does
3 mean it was disclosed to them.

4 MR. BLOCK: So it was not disclosed, Your
5 Honor, and --

11:25:42

6 THE COURT: It was not?

7 MR. BLOCK: Your Honor, we have a deposition
8 transcript and an expert designation, and I would be very
9 happy to see their proffer of the disclosure. And if they

11:25:50

10 will be confined to that disclosure, we won't have a
11 problem, subject to other evidentiary issues, but we won't
12 have a disclosure problem.

13 So all you're hearing now is me saying,
14 please, go look at the disclosure, and them saying --

11:26:04

15 THE COURT: But you don't want to do it during
16 the trial, not with me. That's why I take so much time
17 ahead of time.

18 MR. BLOCK: Correct, Your Honor. We would
19 rather have clarity in advance. If we have to do it on the
20 stand, we will respect Your Honor's --

11:26:16

21 THE COURT: You can try to do it on the stand.

22 MR. BLOCK: Correct, Your Honor.

23 So the second point -- so that was the
24 disclosure point. The second point is relevance. They

11:26:25

25 said we need to contextualize to the jury how enormous this

1 liability is. That argument is not at all clear to me.

2 What they're asking for is a certain amount of fees, and

3 they want to put onto the jury some undisclosed testimony

4 about what a big deal decommissioning is. It is not clear

11:26:41 5 to me that the jury needs to hear that in order to decide

6 the dispute that is here.

7 THE COURT: In that deposition, what was

8 discussed?

9 MR. BLOCK: Well, I think --

11:26:48 10 THE COURT: I am not going through the whole

11 deposition. I am not going to read it.

12 MR. BLOCK: No.

13 THE COURT: But you tell me what they went into

14 that you want to limit them to.

11:26:56 15 MR. BLOCK: Oh -- to the contrary, Your Honor,

16 we --

17 THE COURT: Or you want to keep it out.

18 MR. BLOCK: We want to limit them to what was

19 disclosed.

11:27:03 20 THE COURT: Where? Anywhere?

21 MR. BLOCK: So, I think the rule is that they

22 should be limited to what they disclosed in -- for an

23 unretained witness, a statement of the facts and

24 conclusions. There are cases in which judges have

11:27:17 25 permitted litigants to exceed that statement that the rule

1 requires --

2 THE COURT: Yeah.

3 MR. BLOCK: -- when a topic was thoroughly
4 covered in the deposition. And, again, if they want to

11:27:27 5 make a proffer, here are the pages and lines from the
6 deposition that we want to go into, I suspect we could come
7 to agreement.

8 My problem now is that I have a disclosure
9 that says nothing of substance. It says here are the

11:27:40 10 topics I will discuss. We took a deposition and were aware
11 of the content that's there, but they won't be limited to
12 that. I have no idea what they're going to try and do with
13 Mr. Hathcock.

14 MR. YEGPARIAN: Your Honor, if the disclosure
11:27:53 15 had nothing of substance, I am scratching my head as to why
16 Chevron decided to go ahead and take the deposition.

17 If the disclosure was so inadequate, it
18 didn't disclose any information, the Court -- the law from
19 the Southern District is they have waived any prejudice by
11:28:10 20 sitting Mr. Hathcock down and taking his deposition. And
21 his deposition includes the disclosures that append to the
22 document Mr. Block is articulating.

23 THE COURT: Now, did you ask any questions at
24 the deposition?

11:28:24 25 MR. YEGPARIAN: I believe --

1 THE COURT: Or your side?

2 MR. YEGPARIAN: On our side -- so it was
3 Chevron's deposition. They noticed it.

4 THE COURT: I understand.

11:28:29 5 MR. YEGPARIAN: I think I took, maybe, 10 or 15
6 minutes.

7 THE COURT: What did you go into? Anything
8 about all that money and costs?

9 MR. YEGPARIAN: I need to go back and revisit
11:28:37 10 the transcript. I think I may have touched on some of it,
11 but I can't say.

12 THE COURT: And so how does he -- how does he
13 get into the cost of decommissioning and so forth, as a
14 measure of -- anything in this case, I mean, if it wasn't
11:28:53 15 brought out?

16 MR. YEGPARIAN: Sure.

17 THE COURT: Just what they said. Any -- any
18 undisclosed evidence regarding Devon's alleged damages.

19 MR. YEGPARIAN: So what he disclosed was the
11:29:04 20 scope, size, and enormity of these costs that go directly
21 to our declaratory judgment claims for indemnity and
22 defense. That was disclosed in his deposition.

23 So if the concern is, if he gets up -- if
24 Chevron's concern is he is going to get up and say \$8
11:29:20 25 billion, and we weren't prepared for that, understood, but

1 that is not what Mr. Hathcock is going to testify to.

2 He is an engineer who understands the
3 scope and enormity of these costs, and he is just going to
4 contextualize, for purposes of our declaratory judgment
11:29:34 5 claims, the scope and enormity of decommissioning, which
6 this jury needs to know because this is not everyday stuff.

7 THE COURT: I understand it. What do you say?
8 Are they entitled to go into any of that?

9 MR. BLOCK: They should be restricted to what
11:29:49 10 was disclosed. And so you have had --

11 THE COURT: In your deposition?

12 MR. BLOCK: Well -- so, Your Honor, he is
13 disclosed as a fact and expert witness on their 26(a)s, we
14 were obliged to take his deposition, and we did our level
11:30:04 15 best to exhaust all of the knowledge we could from him.

16 And so our concern is that since that time, without having
17 served any disclosure, they have something cooked up.

18 Now, he said it won't be 8 billion. I
19 just don't know what he's going to say, and I haven't had
11:30:18 20 the chance to depose him on it. If they are going to --
21 again, if they want to make a proffer --

22 THE COURT: Why didn't you ask that during the
23 first go-round to see what else he is going to talk about?

24 MR. BLOCK: Well, I think we did ask him. We
11:30:31 25 tried to exhaust all of the topics on which he was

1 designated, and all of the topics that were in his
2 disclosure.

3 THE COURT: Is there anything in the disclosure
4 about the cost of -- what is it -- the cost of the -- of
5 the operation?

11:30:44

6 MR. BLOCK: I would be happy to hand it up.

7 THE COURT: No, you tell me.

8 MR. BLOCK: And the answer is no. This is
9 Document 39. So he says -- Mr. Hathcock is expected to

11:31:03

10 review all work done to decommission the properties at
11 issue, and opine as to whether the work was necessary.

12 Then it says, "He may also offer other
13 opinions as to how the decommissioning process generally
14 takes place, the customary practices for decommissioning
15 offshore properties in the Pacific Ocean, regulatory
16 requirements for decommissioning offshore properties in the
17 Pacific Ocean."

11:31:21

18 They say he may provide a report or
19 amended designation, which he did not do. We asked him
20 questions about what he -- the topics that he disclosed in
21 this designation. And, again, so long as he is restricted
22 in the case, to testimony that he gave, whether in response
23 to our questions on these topics, or in response to the
24 opportunity they had to elicit testimony from him, we are
25 very unlikely to have a problem.

11:31:35

11:31:56

1 Our concern is that he will seek to exceed
2 his disclosures.

3 THE COURT: And if he does, this -- this is an
4 academic question. I am not there yet. Is it reversible
11:32:10 5 error to go beyond that within the discretion of the judge?
6 I don't know. Okay? Nobody wants to do this twice. So
7 it's something both sides ought to, you know, consider.
8 You want to do it twice?

9 I may -- I may ask another judge to handle
11:32:31 10 it. I don't know. But I'll do the best I can, but I'm
11 just throwing that out as a former trial lawyer. Okay?

12 MR. YEGPARIAN: Your Honor --

13 THE COURT: In other words, how broad does the
14 judge's -- what is it -- authority go relative to the rules
11:32:49 15 of evidence? If you go a step or two beyond what he said,
16 if I think it is relevant, and it would help the jury
17 decide the case.

18 I'm just telling you how judges think
19 about it. I don't try a case for the appeals court. And I
11:33:06 20 think we have some appeals law clerks around here, but I'm
21 just saying generally, I do not. But, you know, this is a
22 trial court. You call them as you see them, and you move
23 on.

24 MR. BLOCK: Absolutely.

11:33:21 25 THE COURT: But it is the lawyers and their

1 clients, or whatever, you want to do again, if it is
2 reversible, if it is not. If I give them some leeway
3 because this -- what he identified, some areas, does that
4 restrict them as who interprets? The judge interprets what
5 you just read? Is it broad enough to get into the money
6 need for shutting down an operation?

7 MR. YEGPARIAN: Absolutely.

8 THE COURT: This is how I am thinking about it.
9 I'm not there yet.

10 All right. What else?

11 MR. YEGPARIAN: Just from his deposition, Your
12 Honor.

13 THE COURT: Yes.

14 MR. YEGPARIAN: Chevron asked the question, "Do
15 you know what the current cost of decommissioning efforts
16 has been?"

17 "Yes. \$15.9 million."

18 Question from Chevron's attorneys: "And
19 do you know what the projected costs of decommissioning
20 efforts are?"

21 "Yes, \$303 million."

22 They had his disclosure. They did not
23 object to it. They didn't contact us about --

24 THE COURT: Well, when was that? You're
25 reading what?

1 MR. YEGPARIAN: From Mr. Hathcock's deposition
2 that they took.

3 THE COURT: All right. Okay. What's the next
4 one? Let's see.

11:34:31 5 All right. Number 5. I have a bunch of
6 notes here. Let me go through it quickly. This is a
7 disagreement relating to the disputed portions of the CAA
8 first arose -- oh, yeah, this is the conduct after
9 disagreement.

11:34:52 10 And there is -- then you go back to the
11 2000 dispute where -- and they are test -- Texaco, Monterey
12 successor's, and predecessor, and Santa Fe -- well, let's
13 see -- were contacted. Each asserted that the other had
14 responsibilities related to -- I remember that one.

11:35:10 15 And you see what I have over here? My
16 little note says, argue. Let me hear about it. I read
17 your -- what you wrote. Now tell me what it is about.

18 MR. BLOCK: Sure, Your Honor. They want to get
19 into a series of events that happened approximately four
11:35:26 20 years after this contract.

21 THE COURT: The contract was what?

22 MR. BLOCK: The 1996 --

23 THE COURT: '96.

24 MR. BLOCK: -- contract, during which there was
11:35:33 25 a dispute between these parties' predecessors about--

1 THE COURT: Whose parties' predecessors?

2 MR. BLOCK: Chevron and Devon's predecessors.

3 THE COURT: Okay. Each side's predecessor?

4 MR. BLOCK: Correct. So it's Texaco on

11:35:47 5 Chevron's side.

6 THE COURT: Right.

7 MR. BLOCK: I believe it was --

8 THE COURT: Now, Conoco is in on it now. We
9 have got a piece of the action of some -- we will get to

11:35:54 10 that later. I got another question.

11 MR. BLOCK: We will -- Conoco has always been
12 involved, Your Honor.

13 THE COURT: Okay. Go on.

14 MR. BLOCK: This question was -- so the --
11:36:02 15 look, it's hard to do succinctly, which is part of our
16 concern. The government asked --

17 THE COURT: You tell me about it. Make it
18 simple. Okay. What does that mean?

19 MR. BLOCK: Let me try, Your Honor. The
11:36:12 20 government asked a question about the financial condition.

21 THE COURT: Which, the federal government?

22 MR. BLOCK: The federal government.

23 THE COURT: Asked a question of who? Whose
24 predecessor?

11:36:24 25 MR. BLOCK: Well, the question was asked first

1 of Chevron's predecessor, Texaco. Texaco told the
2 government, you shouldn't be talking to us. You should be
3 talking to Devon's predecessor, Santa Fe.

4 THE COURT: Okay. They talked to them.

11:36:36 5 MR. BLOCK: There was an exchange of letters.
6 Santa Fe said, No, you should be talking to Texaco.

7 THE COURT: Uh-huh. Now you're talking --

8 MR. BLOCK: And then Texaco said to the
9 government --

11:36:45 10 THE COURT: -- to the Judge, see? So it all
11 ends up here.

12 MR. BLOCK: And then Texaco said to the
13 government, Look, we're not responsible for this
14 decommissioning.

11:36:52 15 THE COURT: Texaco -- just use "predecessor."

16 MR. BLOCK: Sure. Chevron -- so Chevron's
17 predecessor.

18 THE COURT: Told what?

19 MR. BLOCK: Having engaged in this dispute with
11:37:01 20 Devon's predecessor about who is responsible said to the
21 government, Look, we don't have to have this fight now.
22 You have a question about the lease. We're happy to help,
23 but we are not responsible and we're not taking
24 responsibility.

11:37:17 25 Now, what they want to do is use that

1 series of events to suggest that Texaco acknowledged --
2 sorry. That Chevron's predecessor acknowledged
3 responsibility back in the year 2000.

4 THE COURT: For what? Capping oils?

11:37:34 5 MR. BLOCK: For the obligation that's at issue
6 in this case.

7 THE COURT: All right. Now what?

8 MR. BLOCK: Now, we want to keep that out, Your
9 Honor, because, two reasons, we think it is unfairly
11:37:44 10 prejudicial to offer evidence in front of the jury of past
11 actions in furtherance of a settlement as evidence of
12 liability.

13 THE COURT: And was -- it was part of an offer
14 of settlement?

11:37:54 15 MR. BLOCK: Correct. So if you look at the
16 final letter where Texaco goes back to MMS and says, you
17 asked us about the financial condition of these leases. We
18 told you to talk to Santa Fe. They refused. We are going
19 to help you out, but clearly we are not -- it says it in
11:38:12 20 the letter. We are not assuming responsibility, and this
21 is under 408.

22 THE COURT: All right.

23 MR. BLOCK: So they have made all those
24 statements. And simply put, Your Honor, to have to --

11:38:21 25 THE COURT: You want to keep all prior

1 negotiations out?

2 MR. BLOCK: All of the interactions after a
3 dispute arose, and this is clearly after the dispute arose,
4 they're not relevant to interpretation.

11:38:32 5 THE COURT: When was the dispute? In 1996 or
6 was it over 2000 or where? When did it arise?

7 MR. BLOCK: No later than these events in 2000
8 where you have letters back and forth between Chevron's
9 predecessor and Devon's predecessor about who is going to
11:38:47 10 bear this responsibility. None of that is relevant to --

11 THE COURT: Why? Wasn't any debts? There is
12 an assumption of debts or whatever somewhere in one of the
13 agreements. Just bring me back up to speed on that, and
14 what, if anything, does that have to do with this -- a
11:39:07 15 motion in limine.

16 MR. BLOCK: Sure. The core question in the
17 case revolves around the meaning of a 1996 contract five
18 years after Devon's predecessor sold away these leases.

19 This dispute in 2000, the government says,
11:39:24 20 we're worried about the financial condition of the person
21 who bought the lease all the way back in 1991, and they
22 asked Chevron's predecessor and Devon's predecessor to
23 participate in giving them information about that entity's
24 financial condition.

11:39:42 25 THE COURT: What about whoever those folks were

1 at that time?

2 MR. BLOCK: Whoever those folks were? It was a
3 company called Signal Hill.

4 THE COURT: Go on.

11:39:49 5 MR. BLOCK: And the government's concern was if
6 they're not up to it, somebody is going to have to pay.

7 And so that was this dispute we are having now in miniature
8 20 years ago. And our concern is that those events are not
9 relevant to interpretation of the 1996 contract, and the

11:40:08 10 cases that we cite to you in the brief on the motion in
11 limine say after a dispute has arisen, it's not relevant.
12 And so it would be unfairly prejudicial for us to --

13 THE COURT: Got it.

14 MR. BLOCK: -- to have to explain all of the
11:40:21 15 back and forth that I just struggled to -- with apologies
16 to explain to your Your Honor, because it is complex.

17 THE COURT: All right. What's the response?

18 MR. TABOLSKY: Three points, Your Honor.

19 First, there was no dispute regarding the meaning of the
11:40:34 20 CCA at the time. The government was saying under our
21 regulations and under the lease, the '91 -- or the lease
22 that Signal Hill was on, we think they're responsible. But
23 there was no dispute at that time between Devon's

24 predecessor and Chevron's predecessor dealt with in these
11:40:52 25 documents regarding the meaning of the contract at issue

1 on -- in this case, the 1996 contract.

2 And so there is no dispute at all at that
3 point, but even if there were a dispute, California law
4 does not make stuff that occurred post-dispute off limits.

11:41:04

5 It says that things that occurred pre
6 dispute are more relevant, more probative, but this is --
7 it doesn't -- doesn't create a categorical line and say
8 once there is a dispute, what you say doesn't matter.

11:41:20

9 THE COURT: So why do you need -- why in your
10 mind does the plaintiff need to go into this?

11 MR. TABOLSKY: Because Chevron's predecessor's
12 conduct at the time, Texaco, near in time to the CCA is
13 inconsistent with the position they are taking today
14 regarding the liabilities associated with this lease --

11:41:33

15 THE COURT: How so?

16 MR. TABOLSKY: -- and the CCA.

17 THE COURT: How? How so? What did Texaco --

18 MR. YEGPARIAN: Your Honor, they -- Chevron's
19 predecessor stepped into the shoes of Santa Fe --

11:41:44

20 THE COURT: Right.

21 MR. YEGPARIAN: -- and acted as though it had
22 the liability, the obligations under the CCA that they're
23 coming to court today and saying, we're not on the hook.

24 THE COURT: All right. Got it. Keep going.

11:41:58

25 MR. TABOLSKY: Okay. I can't say that point

1 any better than Mr. Yegparian. I'll stop there.

2 But on the Rule 408 issue that Mr. Block
3 briefly mentioned, he only referred to one document.

4 THE COURT: Hold it. What is 408?

11:42:11 5 MR. TABOLSKY: Limitation on statements and
6 offers of compromise.

7 THE COURT: With all due respect, let me look
8 it up in the book.

9 MR. TABOLSKY: Sure.

11:42:19 10 THE COURT: 408. Oh, the offer of
11 negotiations.

12 MR. TABOLSKY: Yeah.

13 THE COURT: Was it just in negotiations when
14 they took that position?

11:42:29 15 MR. TABOLSKY: Well --

16 THE COURT: It never settled. It never got
17 resolved, right? So what do you need to go into it for?

18 MR. TABOLSKY: Well, it's -- we need to go into
19 it because -- as Mr. --

11:42:40 20 THE COURT: The predecessor --

21 MR. TABOLSKY: The -- Chevron's predecessor's
22 statement and conduct go directly to issues in this case
23 regarding where the liabilities are under the lease and
24 under the '96 contract. But, for Rule 408 purposes,

11:42:53 25 statements and evidence is only off limits under Rule 408

1 if it is made in the context of an offer to compromise.

2 Nowhere did Chevron's predecessor ever
3 make an offer to compromise. To the contrary, they
4 consistently and unequivocally said time and time and time
11:43:09 5 again we're not on the hook for this, and we are not
6 agreeing to do anything on the hook for this.

7 They said as a good corporate citizen, we
8 will help you out with some stuff, but there is no offer of
9 compromise either way. Absent the offer of compromise --

11:43:22 10 THE COURT: So what do you need it for? What
11 do you need to go into it for since it never came to
12 fruition?

13 MR. TABOLSKY: Well, the reason is, is because
14 the statements Chevron's predecessor made go directly to
11:43:35 15 its under -- Chevron's predecessor's understanding of the
16 liabilities --

17 THE COURT: Slow down, please. Say -- say
18 again.

19 MR. TABOLSKY: Okay. Because our point is the
11:43:43 20 CCA was not in dispute.

21 THE COURT: No, it wasn't.

22 MR. TABOLSKY: The contract we're here on
23 today, the 1996 contract, that wasn't the dispute between
24 the government and Chevron 's predecessor. They were
11:43:55 25 fighting about regulations and a different agreement. But

1 in the course of that, Chevron made various statements in
2 writing that are directly contrary to positions they are
3 now taking in this case today.

4 We are --

11:44:07 5 THE COURT: Chevron or the predecessor?

6 MR. TABOLSKY: Chevron's predecessor, Texaco.

7 MR. JOHNSON: For example, Your Honor, Texaco
8 repeatedly referred to itself as the seller of these leases
9 that are giving rise to liability. Texaco interacted with
11:44:21 10 BSEE with the other sellers of the lease, with no
11 involvement by Devon. Texaco performed an audit of Signal
12 Hill without the involvement of Santa Fe, with the other
13 leaseholders.

14 Texaco stepped into the shoes of Santa Fe
11:44:46 15 and acted as though it was the seller of the lease, and of
16 course they want to keep that out because it's a bad fact,
17 but it's highly probative. It is highly relevant. The
18 jury can decide the weight to be given to that evidence,
19 but it should come into evidence.

11:45:02 20 THE COURT: Okay. I am ready to move. Next
21 one. It's Number 6 on page 14, preclude any evidence
22 plaintiffs disclaim having corporate knowledge of as
23 established during discovery. What does that mean?

24 MR. BLOCK: Well, Your Honor, they designated
11:45:22 25 corporate representatives on certain topics.

1 THE COURT: Okay.

2 MR. BLOCK: And we exhausted the corporate
3 knowledge via the depositions of those witnesses, and so if
4 you look at --

11:45:36 5 THE COURT: What do you mean by "exhausted"?

6 MR. BLOCK: Well, Your Honor --

7 THE COURT: You mean you asked as much as you
8 needed to ask?

9 MR. BLOCK: Well, you ask: Please tell me, if
11:45:45 10 you were the representative of Devon on this topic,
11 everything that Devon knows about it that it intends to
12 bring to trial. And if the witness says, we don't know --
13 so I'll give you an example.

14 We asked about the reasons for the
11:45:56 15 assignment of the lease from Santa Fe to Signal Hill. Any
16 communications between the government, their predecessor,
17 about an interest in the lease. The negotiation drafting
18 and execution of the CCA goes on, we detail these in the
19 briefs. And so when they designate a witness, this person
11:46:16 20 will be our company's representative in this litigation on
21 this topic, and we ask: What do you know about this topic?
22 And they say, nothing but the four corners of the document
23 that was produced, which is the substance of the testimony.
24 This is laid out in the brief, Your Honor. They should not
11:46:34 25 be able to show up at trial and exceed that with something

1 different because that was our opportunity in discovery to
2 learn their case.

3 THE COURT: All right.

4 Plaintiff's position.

11:46:44 5 MR. TABOLSKY: What Mr. Block leaves out is --

6 THE COURT: Can you move the microphone over a
7 bit? Just pull it -- pull one in.

8 MR. TABOLSKY: What Mr. Block leaves out is
9 that they chose to take the 30(b)(6) deposition of Devon as
11:46:56 10 the first deposition in the case.

11 THE COURT: Okay.

12 MR. TABOLSKY: Before Mr. Hicks had -- the
13 general counsel of Santa Fe had been deposed -- before
14 their witness, Mr. Whaling, who signed the CCA had been
11:47:09 15 deposed, before documents had occurred, and as these
16 additional witnesses are identified and deposed, we
17 supplement our interrogatory answers.

18 THE COURT: Okay. They would have done that?

19 MR. TABOLSKY: Yes.

11:47:18 20 THE COURT: Go on.

21 MR. TABOLSKY: And in their reply, they don't
22 dispute that we did that, that we supplemented our
23 interrogatories, and that Mr. Hicks was deposed and Mr. --

24 THE COURT: Slow down, please.

11:47:27 25 MR. TABOLSKY: Sorry. That Mr. Hicks was

1 deposited, that Mr. Whaling was deposed. And to be fair to
2 them in their reply, in support of their motion in limine,
3 they do back off and acknowledge that we can present
4 evidence disclosed in discovery that was disclosed via
11:47:39 5 amended interrogatory responses, amended disclosures, what
6 have you.

7 And the issue here is, is we're not going
8 to sit here and say that anyone working at Devon has
9 firsthand knowledge of what occurred in 1996 because we
11:47:51 10 don't, and that's what Ms. -- our corporate rep testified,
11 and that's fine.

12 THE COURT: So corporate knowledge means what?
13 I believe I know, but go on. What's your definition?

14 MR. TABOLSKY: At the time Mr. Casey was
11:48:02 15 deposed, he disclosed the information available to Devon.
16 At that time, Mr. Hicks had not been deposed. Graham
17 Whaling, who signed it on behalf of Chevron's predecessor,
18 Monterey had not been deposed. The rest of the document
19 discovery had not occurred. Other depositions hadn't
11:48:19 20 occurred.

21 As those depositions occurred, we
22 supplemented our written discovery. They could have chosen
23 to take our 30(b)(6) witness at the end of discovery and
24 force us to go through all this. But they chose to take it
11:48:29 25 at the beginning, and they don't get to just sort of freeze

1 the case in time just by deposing our corporate rep first.

2 There are various witnesses, third-party
3 witnesses and others who have information like Mr. Hicks
4 and Mr. Whaling, and we are just saying, we -- we get to
11:48:44 5 put that testimony on.

6 THE COURT: I don't understand -- what is it?
7 Preclude any evidence plaintiffs disclaim having corporate
8 knowledge of as established during discovery. I know I'm
9 just -- let's see. Hang on, these are Chevron's motions.

11:49:02 10 All right. Hang on one second.

11 MR. BLOCK: Yes, Your Honor.

12 THE COURT: Let me see the full text of it.

13 That was -- we're dealing with -- on page 14. Dealing with
14 Number 6.

11:49:45 15 Oh, yeah, that's where you spelled out all
16 these bullet points. Because you say here, "Through these
17 discovery devices, Devon has explicitly stated that Devon
18 does not -- does not and could not have any firsthand
19 knowledge about all of these bullet points."

11:50:08 20 All right. That's where we're at,
21 correct?

22 MR. BLOCK: Yes, Your Honor.

23 THE COURT: All right. Well, again, when I --
24 when I summarized it, I forgot about all these bullet

11:50:20 25 points. That's why I pulled the original. What about all

1 of those bullet points?

2 MR. TABOLSKY: Your Honor, two separate points.

3 And I just want to make sure we're on the same page as to
4 what they're moving on.

11:50:34 5 Just because --

6 THE COURT: I think -- hold it. The same page?

7 MR. TABOLSKY: Yeah.

8 THE COURT: We're dealing with page 14 and 15.

9 Hold it, 15. And it goes on to 16, with one other bullet
11:50:47 10 point. They said, "Devon is bound to the limits it set in
11 discovery and not be permitted to offer at trial any
12 evidence or argument contradicting its previous
13 admissions."

14 MR. TABOLSKY: Okay. We will take -- let's
11:51:01 15 take -- as example --

16 THE COURT: I know -- you can just talk to me
17 about that. What's the problem?

18 MR. TABOLSKY: The problem is, they're saying,
19 if Mr. Casey said he didn't have knowledge of the
11:51:12 20 negotiations that occurred in 1996 --

21 THE COURT: Uh-huh.

22 MR. TABOLSKY: -- that somehow that cuts off
23 any evidence regarding negotiations in 1996. And that
24 Mr. Hicks, a third-party witness who was deposed in this
11:51:24 25 case, that somehow --

1 THE COURT: I don't think he is saying that.

2 Or, are you?

3 MR. BLOCK: No.

4 THE COURT: I don't think so.

11:51:32 5 Go on. Not the way I read all these
6 points.

7 MR. YEGPARIAN: Your Honor, what they are
8 saying, is that Mr. Casey and others who did not have
9 firsthand knowledge can't testify to it. The disconnect
11:51:46 10 here is Mr. Casey and others have testified to having
11 personal knowledge of the items that -- the substance of
12 his deposition.

13 THE COURT: Did they have?

14 MR. YEGPARIAN: Yes.

11:52:00 15 THE COURT: That's what they said?

16 MR. YEGPARIAN: Yes.

17 THE COURT: All right. Isn't that subject to
18 cross-examination?

19 MR. YEGPARIAN: I think this goes to the
11:52:05 20 weight --

21 THE COURT: Or even taking somebody on voir
22 dire to shut off their testimony.

23 MR. YEGPARIAN: I think there is -- there is a
24 footnote here, but I think if the Court's overarching point
11:52:13 25 is this goes to the weight, not the admissibility --

1 THE COURT: No.

2 MR. YEGPARIAN: -- I agree.

3 THE COURT: No, I am not. I am not talking to
4 that -- about that at all. I mean, I understand it now.

11:52:26 5 But the question is, you know, you have some -- someone's
6 got institutional -- you know, institutional memory versus
7 actually being there at the transaction.

8 Is that corporate knowledge? Or is it
9 not? I am looking right back at, you know, the summary,
11:52:50 10 when I boiled it down, preclude any evidence plaintiffs
11 disclaim having corporate knowledge of as established
12 during discovery. Preclude -- stop, that means
13 precluding -- stop any evidence plaintiffs disclaim having
14 corporate knowledge of as established during discovery.

11:53:12 15 So you are saying, if anything came up
16 during discovery, that said they didn't know, they can't
17 start changing it.

18 MR. BLOCK: That is correct, Your Honor. I
19 would refer you to *Super Future Equities against Wells*
11:53:26 20 *Fargo Bank*, which is cited in our reply brief.

21 Now, there is a separate motion on this
22 issue of corporate representative knowledge. This motion
23 is about when we take discovery, we ask what will we
24 confront at trial? And we are entitled to rely on the
11:53:43 25 disclosures that they give us.

1 THE COURT: So they don't change it?

2 MR. BLOCK: Correct. And if they tell us we
3 don't know anything about that, I don't want -- we should
4 not face a witness in front of the jury saying, Well, we
11:53:55 5 told you in discovery we didn't know anything about that,
6 but here is a new story.

7 THE COURT: What?

8 MR. TABOLSKY: Every time Mr. Block speaks, I
9 feel like I am hearing his motion a little differently.

11:54:05 10 What Mr. Casey said is -- referred to
11 Devon's knowledge at the time. After he was deposed, other
12 third-party witnesses were deposed who were directly
13 involved in the CCA's drafting and negotiation and
14 execution. And just because they chose to take Devon's
11:54:25 15 deposition, corporate deposition first --

16 THE COURT: Well, it says, preclude any
17 evidence plaintiffs disclaim having corporate knowledge.
18 Your position is they may have at one time, but you got it
19 in through somebody else?

11:54:38 20 MR. TABOLSKY: Right. It came in later during
21 discovery.

22 THE COURT: Are you going to -- trying to stop
23 that?

24 MR. BLOCK: I -- well, this depends a little
11:54:45 25 bit, Your Honor, on what you allow their corporate

1 representatives to do. But this is not -- does not go to
2 Mr. Hicks' testimony, or Mr. Whaling's.

3 THE COURT: Yes, sir.

4 MR. JOHNSON: And a corporate representative --

11:54:58 5 of course, Devon doesn't have anyone that was present in
6 1996. Mr. Casey was 24 years old and working in the oil
7 field. This is no different than an asbestos case. A
8 corporation can rely on nonhearsay business records for its
9 personal knowledge. Mr. Casey has reviewed nonhearsay

11:55:20 10 business records to acquire knowledge of Devon.

11 Other witnesses have also testified since
12 his deposition. He has reviewed those depositions --

13 THE COURT: Since his deposition.

14 MR. JOHNSON: Since his deposition.

11:55:32 15 THE COURT: In other words, filling in some
16 gaps?

17 MR. JOHNSON: Yeah. And more information comes
18 to light. It is not like his personal knowledge is frozen
19 in time on, you know, week three of the discovery period.

11:55:43 20 We're now at trial. He studied business records. He has
21 reviewed testimony.

22 THE COURT: Got it. Got it. All I can do is
23 say I finally got it.

24 All right. Number 7. We will take a

11:55:56 25 break when we reach --

1 MR. JOHNSON: Your Honor, can I indulge the
2 Court for a bathroom break now?

3 THE COURT: Oh, sure enough.

4 MR. JOHNSON: Yes.

11:56:03 5 THE COURT: Okay. It is almost -- what is
6 it -- it's almost 12:00 noon, 11:57. We will get back in
7 at one -- at 12:10 and go on. I want to take a break
8 before my criminal case. I got to talk to the probation
9 office.

11:56:18 10 But we will -- and so we will see you back
11 in ten -- 13 minutes. All right. Stand adjourned until
12 then.

13 THE LAW CLERK: All rise.

14 (Proceedings recessed from 11:56 a.m. to 12:15 p.m.)

12:15:02 15 THE LAW CLERK: All rise.

16 THE COURT: All right. Be seated. We have an
17 attorney who approached relative to a witness in this case.
18 Is that attorney here?

19 Yes, sir. You want to come on up, please?

12:15:22 20 Just for the record, state your name, please.

21 MR. ACKER: Yes, sir. Your Honor, I am Rodney
22 Acker with Norton Rose Fulbright.

23 THE COURT: Okay.

24 MR. ACKER: I represent Graham Whaling.

12:15:31 25 THE COURT: Pull that mic over a little bit.

1 MR. ACKER: Yes, sir.

2 THE COURT: Okay. It's one of the witnesses --

3 MR. ACKER: Yes, sir.

4 THE COURT: -- subpoenaed by both sides.

12:15:38 5 MR. ACKER: Well, they have asked me to accept
6 a subpoena from them, and I have agreed to do that.

7 THE COURT: Okay.

8 MR. ACKER: He was -- Mr. Whaling, by way of
9 reference, is a former employee of both sides -- of the
12:15:52 10 predecessor to both sides.

11 THE COURT: Okay.

12 MR. ACKER: But hasn't been involved for 25
13 years or whatever.

14 A very unusual request, Your Honor.

12:16:03 15 THE COURT: Yes, sir.

16 MR. ACKER: Mr. Whaling finishes his 90th
17 cancer treatment this Friday.

18 THE COURT: 90th?

19 MR. ACKER: 90th radiation treatment this
12:16:15 20 Friday. I think that is correct. I know Friday is the
21 date, but I think it is his 90th one. He and his wife are
22 planning to go to California on Saturday. I understand the
23 problems with trying to organize witnesses, but if there
24 was any way the Court could suggest that he testify on
12:16:35 25 Thursday afternoon, or Friday, that would be great.

1 THE COURT: Thursday afternoon or Friday?

2 MR. ACKER: That would be great.

3 THE COURT: Any problem with the plaintiff?

4 MR. JOHNSON: Yes. I mean, potentially.

12:16:48 5 Potentially.

6 THE COURT: What's the problem? How long does
7 your testimony -- or your direct or cross going to be?

8 MR. JOHNSON: I -- at this point, I mean, two
9 hours plus. I don't know. I mean, I am still working on

12:17:03 10 outlines and whatnot.

11 THE COURT: How about the defense, what is your
12 position?

13 MR. ROUHANDEH: If his schedule can be
14 accommodated, we would be fine with it.

12:17:10 15 THE COURT: So you are opposed --

16 MR. JOHNSON: No, I am not opposed. I am going
17 to try to accommodate his schedule.

18 Here is the issue, Your Honor. If you
19 will recall, Defendants sought a continuance at the last

12:17:23 20 pretrial because Graham Whaling was their most important
21 witness. Graham Whaling had agreed if we could accommodate
22 his treatment schedule that he could appear throughout the
23 last trial setting and we said we could do that. I also
24 offered to present him by deposition at the last trial

12:17:39 25 setting.

1 Then it was suggested that if we moved the
2 trial to September, he would be available throughout
3 December (sic). Then we had a meet and confer a week ago,
4 and I was told if we could get him finished by Monday
12:17:51 5 evening, that would suffice because he wanted to leave to
6 go to Pebble Beach on Tuesday. And now I am hearing that
7 he needs to leave on Friday, and so I am forced to call him
8 adverse in my case either Thursday night or Friday.

9 THE COURT: All right. Let me ask you this:

12:18:07 10 Was there first an agreement to go into the next week?

11 MR. ACKER: Your Honor, I have -- actually, we
12 have had a number of conversations, Mr. Johnson and I. I
13 did say that he would much prefer, and his wife more
14 importantly, would much prefer he get on the airplane with
12:18:23 15 her.

16 He said if he had to, he could wait until
17 Monday. He has -- they have guests coming early next week.
18 He would like --

19 THE COURT: Where, into California?

12:18:33 20 MR. ACKER: In California.

21 THE COURT: All right. How much time do you
22 have approximately?

23 MR. ROUHANDEH: An hour-and-a-half, I would
24 say.

12:18:38 25 THE COURT: So you are looking at four hours

1 total?

2 MR. ROUHANDEH: Total.

3 MR. JOHNSON: Possibly. Here is -- here is a
4 possible suggestion, Your Honor, is -- and I guess this is
5 a question for the Court. Do you expect we will get to
6 evidence Thursday afternoon?

7 THE COURT: Let's see. We pick a jury in the
8 morning. I don't -- yeah, but I'm not sure of four hours'
9 worth.

10 MR. JOHNSON: Right. And so I would like --
11 rather than have Mr. Whaling called -- first of all, I
12 would like an instruction from the Court or a comment to
13 the jury that he's being called by us out of order,
14 adverse, so they understand -- to accommodate his schedule.

15 THE COURT: Right.

16 MR. JOHNSON: Because there is going to be a
17 total lack of context to his testimony if he is one of the
18 first witnesses that goes up.

19 One thought I had is if we start with one
20 of our witnesses Thursday afternoon and limit our direct --
21 I just don't know how much time we will have Thursday. But
22 if it is -- let's say it is two hours, limit our direct to
23 two hours, we can put Mr. Whaling on the stand first thing
24 Friday morning, agree to go all the way through, then

25 release him, and then they can pick up with their cross or

1 I can pick up with my direct of the first witness we
2 called.

3 MR. ROUHANDEH: I don't know who that witness
4 is, which might depend who that first witness would be.

12:20:06 5 MR. JOHNSON: Well, I mean, I am waiting on
6 rulings and whatnot, but that's...

7 MR. ROUHANDEH: I guess what I would say, two
8 issues. One is, I don't like the idea that the jury is
9 going to hear a direct and have to wait to hear our cross.

12:20:22 10 Well --

11 MR. JOHNSON: It is not a --

12 MR. ROUHANDEH: -- and the witness intercedes,
13 but the other is, he keeps referring to Mr. Whaling as I am
14 calling him adverse, which I'm not quite sure what that
15 means. He is a nonparty. He is a former employee of both,
16 and I think he is trying to sneak in a little ruling here
17 on whether he can call him adversely. He put him on his
18 witness list. We put him on our witness list.

19 MR. JOHNSON: Okay.

12:20:43 20 MR. ROUHANDEH: And so I don't know that that
21 issue has to be resolved at this point as to whether he can
22 lead the witness, the scheduling.

23 THE COURT: All right. All right.

24 MR. JOHNSON: May I respond?

12:20:51 25 THE COURT: Yes.

1 MR. JOHNSON: Okay. Mr. Whaling was the CEO of
2 Monterey. Chevron stands in the shoes of Monterey. He is
3 the former CEO of an adverse party. His lawyer is being
4 paid for by Chevron. He was prepped for his deposition
12:21:08 5 partially by Davis Polk. When I reached out -- when I got
6 a subpoena and reached out, I was told that he worked for
7 Chevron and Chevron had assigned counsel. The notion that
8 he is not somehow adverse is absurd.

9 THE COURT: I will rule on that later. As far
12:21:25 10 as I'm concerned, you can tell him he goes on number one,
11 10:30 Friday. 10:30 a.m. Friday. All right? That's it.

12 MR. ACKER: Thank you, Your Honor. May I be
13 excused, Your Honor?

14 THE COURT: Yes, sir.

12:21:38 15 MR. ACKER: Thank you.

16 THE COURT: All right. We're down to Number 7.

17 MR. BLOCK: We are, and I have some good news
18 on that one, Your Honor. So this involves the claim for
19 damages --

12:21:53 20 THE COURT: California law?

21 MR. BLOCK: For fee shifting in this case, Your
22 Honor.

23 THE COURT: Yeah.

24 MR. BLOCK: We -- I think the parties agree

12:22:00 25 that there is an issue of law for Your Honor to decide, and

1 we're also agreed that the amount of those fees won't go to
2 the jury in any event. So under Rule 54, that can be
3 submitted to Your Honor.

4 THE COURT: Okay.

12:22:11 5 MR. BLOCK: The legal question is now with
6 you --

7 THE COURT: So what is -- then Number 16
8 withdrawn? Is it --

9 MR. TABOLSKY: Number 7.

12:22:21 10 MR. BLOCK: It's Chevron's Number 7 --

11 THE COURT: Number 7 rather. Number 7.

12 MR. BLOCK: I just want to make sure that
13 Mr. Tabolsky has stated accurately --

14 THE COURT: Sure.

12:22:30 15 MR. BLOCK: -- the discussion that we had.

16 MR. TABOLSKY: Mr. Block has accurately stated
17 it, yes.

18 MR. BLOCK: So 7 is withdrawn on that
19 understanding that fees -- I mean, those fees will not go

12:22:39 20 to the jury so it is effectively granted, but it is
21 withdrawn.

22 THE COURT: Okay. It's withdrawn.

23 All right. Number 8, defendant moves to
24 preclude plaintiff from presenting any testimony from

12:22:48 25 Devon's corporate representatives, plural.

1 All right.

2 MR. BLOCK: So, Your Honor, this is about the
3 proper use of corporate representatives by which I mean
4 people designated to represent the corporation under
12:23:07 5 Rule 30(b) (6) .

6 THE COURT: Go on.

7 MR. BLOCK: And I would cite for the Court the
8 *Union Pump* case from the Fifth Circuit in which the Fifth
9 Circuit explained: Union Pump argues that Bixler was
12:23:30 10 permitted to testify to matters that although they were not
11 within his own personal knowledge, were within the
12 knowledge of the corporation because Bixler was designated
13 as Union Pump's corporate representative.

14 We disagree. Federal Rule of Civil
12:23:47 15 Procedure 30(b) (6) allows corporate representatives to
16 testify to matters within the corporation's knowledge
17 during deposition, and Rule 32(a) (3) permits an adverse
18 party to use that deposition testimony during trial.

19 However, a corporate representative may not testify to
12:24:09 20 matters outside his own personal knowledge, "To the extent
21 that information is hearsay, not falling with one of
22 the" -- "within one of the authorized exceptions." And I
23 omitted the reading of a citation, Your Honor.

24 What you frequently see is a corporate
12:24:29 25 representative or other fact witness testifying to the

1 contents of a corporation's business records. That is not
2 the situation we have here. So --

3 THE COURT: Why not?

4 MR. BLOCK: Mr. Casey, for example, the -- the
12:24:46 5 documents that he has reviewed are essentially the 1996
6 contract related correspondence --

7 THE COURT: What's his position, first of all?
8 That is your corporate rep?

9 MR. BLOCK: This is not our corporate rep, Your
12:24:59 10 Honor.

11 THE COURT: Whose is it? Whose corporate --

12 MR. BLOCK: We are Chevron, and we are moving
13 to preclude Devon --

14 THE COURT: All right.

12:25:05 15 MR. BLOCK: -- from putting on the stand --

16 THE COURT: Their corporate rep?

17 MR. BLOCK: Well, for -- from eliciting from
18 witnesses on the stand testimony outside those witnesses'
19 percipient knowledge. So specifically Mr. Casey.

12:25:21 20 THE COURT: Yeah.

21 MR. BLOCK: You just heard Mr. Tabolsky talking
22 about how during the relevant events in this case, he was
23 working in oil fields. He was 24 years old. He was in
24 college.

12:25:30 25 THE COURT: Right.

1 MR. BLOCK: I forget the details.

2 THE COURT: And he is still with the company,
3 right? He is going to be their corporate representative
4 sitting at the table?

12:25:38 5 MR. BLOCK: So I want to distinguish, Your
6 Honor, between the corporate representative designated for
7 30(b)(6), they've designated a couple, and the party
8 representative sitting at the table.

9 THE COURT: Right.

12:25:48 10 MR. BLOCK: I don't know who they have selected
11 to be their party representative who will sit at the table.
12 Setting that aside, whether Mr. Casey will sit at the
13 table, if they call him to the stand, I think he should be
14 restricted to issues as to which he has personal knowledge
12:26:05 15 under Rule 602, which is percipient knowledge.

16 THE COURT: What does "percipient" mean?

17 MR. BLOCK: Percipient means from perception.
18 So a witness who observed an event that is capable of being
19 observed. This is from the note to the advisory committee
12:26:22 20 on Rule 602 itself. The rule requiring that a witness who
21 testifies to a fact, which can be perceived by the senses,
22 must have had an opportunity to observe and must have
23 actually observed the fact is a most pervasive
24 manifestation of the common law insistence on the most
12:26:39 25 reliable sources of information.

1 THE COURT: So what do you want to do?

2 MR. BLOCK: Well, very simply, Your Honor, we
3 are entitled to use a 30(b)(6) deposition, if we want to,
4 as the adverse party. But they are not allowed -- entitled
12:26:52 5 to present hearsay through a witness who didn't have any
6 involvement in the event --

7 THE COURT: If you use a deposition against
8 who -- how do you get it into evidence?

9 MR. BLOCK: How do we?

12:27:03 10 THE COURT: Yes.

11 MR. BLOCK: So this is Chevron's motion in
12 limine to preclude certain -- a category presentation by --
13 of evidence by Devon.

14 THE COURT: Yeah, but who -- the use of a
12:27:11 15 deposition by who? By them or by you?

16 MR. BLOCK: Well, sorry, are you asking what we
17 will do or what we're moving to preclude?

18 THE COURT: No. No.

19 MR. BLOCK: I apologize.

12:27:18 20 THE COURT: What I'm saying is I didn't
21 understand that thing with -- they can present it by
22 deposition.

23 MR. BLOCK: Oh, no, they cannot, Your Honor.

24 THE COURT: Say that again.

12:27:27 25 MR. BLOCK: Sure.

1 THE COURT: All right. Go over that point
2 again because I wasn't clear.

3 MR. BLOCK: Yeah. This is Federal Rule of
4 Civil Procedure 32(a) (3) --

12:27:35 5 THE COURT: And what does it say?

6 MR. BLOCK: -- from memory. It says that a
7 30(b) (6) deposition can be used --

8 THE COURT: That's of a corporate rep?

9 MR. BLOCK: Correct.

12:27:45 10 THE COURT: Go on.

11 MR. BLOCK: At trial by an adverse party --

12 THE COURT: All right.

13 MR. BLOCK: -- for any purpose.

14 THE COURT: Okay.

12:27:53 15 MR. BLOCK: So Chevron, at our option, may use
16 the deposition testimony we took from Devon's corporate
17 representatives, but they are not entitled under those same
18 rules to play 30(b) (6) testimony. They have to go through
19 a different set of the rules. I don't think they are
12:28:10 20 proposing to play their corporate representative's
21 deposition so that is not the issue here.

22 THE COURT: Well, have they identified him as a
23 witness on the witnesses?

24 MR. BLOCK: They have identified Mr. Casey as a
12:28:21 25 witness who they intend to call live.

1 THE COURT: Okay.

2 MR. BLOCK: And Mr. Casey has said, in fact,
3 Mr. Tabolsky just said, no one at Devon, including
4 Mr. Casey, has firsthand knowledge of any of these events.

12:28:32 5 And so his only knowledge of the contract and the
6 happenings in this event is from documents of 25 years ago.

7 Now, these are not the sorts of things
8 that corporate representatives look at their corporate
9 records and say, Here's what's in the general ledger of

12:28:50 10 Devon Corporation. Literally at his deposition, Mr. Casey
11 said, I read the CCA, and then he said here is what I think
12 about it.

13 That is not permissible testimony because
14 there is no personal knowledge or foundation from it. And
15 now, again, we are entitled to use his deposition if we
16 want to, because we took it.

12:29:04

17 THE COURT: Where? Against him or just play
18 it?

19 MR. BLOCK: Just to play it, if we wanted to
20 use that, but that is not the issue here.

12:29:14

21 THE COURT: Even if he is available?

22 MR. BLOCK: That is true, Your Honor. Because
23 in -- with respect to that deposition, it's not the person
24 you're thinking of; it is the corporation.

12:29:25

25 So Mr. Casey, in his capacity as a

1 corporate representative, testified as Devon because Devon
2 cannot be called to the stand, the rules permit the playing
3 of somebody who testified as a corporate voice by the
4 adverse party. However --

12:29:42 5 THE COURT: Just standing up and reading it?

6 MR. BLOCK: We would play a video, Your Honor,
7 if we chose -- if we elected to do that, correct.

8 Mr. Casey, if he has personal knowledge of
9 any events in the case, could testify to those on the
10 stand, but he doesn't.

11 THE COURT: What are they going to do with
12 Casey? Have any idea?

13 MR. BLOCK: Yes, Your Honor.

14 THE COURT: What are they going to do?

12:30:03 15 MR. BLOCK: What they have said -- what they
16 have said in their witness disclosures -- this is the Devon
17 witness list, in the pretrial order.

18 THE COURT: Okay.

19 MR. BLOCK: -- is that Mr. Casey will testify
12:30:20 20 to "Devon's contentions regarding why and how Chevron had
21 breached its contractual obligations to Devon."

22 So our understanding based on the
23 deposition and what they have said here is that they
24 literally want to have Mr. Casey, whose entire basis for
12:30:38 25 knowledge in the case is sitting down with litigation

1 counsel to read the contract. They are going to ask him:
2 What does Devon think this means? That's not competent
3 testimony, because he doesn't have any personal knowledge
4 or foundation to give it.

12:30:54 5 THE COURT: I want to hear the other side. We
6 will go back and forth.

7 MR. TABOLSKY: Thank you, Your Honor.
8 Mr. Block's argument started with the notion that personal
9 knowledge has to be contemporaneous knowledge. And the
12:31:06 10 Fifth Circuit has unequivocally said that is wrong. In the
11 *Cutting Underwater Technologies v. Eni U.S. Operating* case,
12 the Fifth Circuit stated, "Moreover, personal knowledge
13 does not" --

14 THE COURT: Hold on. People speed up when they
12:31:19 15 read, and you are starting to speed up. Go on.

16 MR. TABOLSKY: "Moreover, personal knowledge
17 does not necessarily mean contemporaneous knowledge."

18 And Judge Rosenthal, in the *Powers v.*
19 *Broken Hill Proprietary* case, "Personal knowledge may
12:31:35 20 include knowledge gained from other company employees, and
21 from reviewing company records."

22 And because the -- you asked earlier is
23 this something I can be held to have abused my discretion
24 on, in matter of *Green*, 968 F.3d 516, the Fifth Circuit
12:31:50 25 held the district court abused its discretion in refusing

1 to consider testimony because the witness did not have
2 contemporaneous knowledge.

3 Simply put, personal knowledge does not
4 require contemporaneous knowledge. As Judge Lake in the
12:32:03 5 *Ware* case, Judge Rosenthal in the *Powers* case made clear,
6 in the corporate setting, employees get personal knowledge
7 all the time based on company records and reports, as long
8 as it's -- they can rely on nonhearsay sources to gain
9 personal knowledge.

12:32:18 10 THE COURT: Nonhearsay sources, what does that
11 mean in that context?

12 MR. TABOLSKY: For example, any document that's
13 not hearsay. So, the CCA, is not hearsay. It's a
14 contract. It is a verbal act. Anything that is a business
12:32:31 15 record under 803(6).

16 THE COURT: Well, what about if the business
17 record contains hearsay?

18 MR. TABOLSKY: If the business record -- I
19 agree.

12:32:42 20 THE COURT: It comes up all the time,
21 especially in criminal cases.

22 MR. TABOLSKY: I understand the Court's
23 question there.

24 THE COURT: In other words, it may be
12:32:50 25 admissible as a first step, as a business record, but

1 what's in there, you know, may not be admissible.

2 MR. TABOLSKY: Right. But, you know, for
3 example, to use -- in our disclosures, we talk about he
4 will testify within his -- this is what we said, "matters
12:33:08 5 within his personal knowledge including knowledge of
6 Devon's contentions."

7 I don't know how else you could have -- I
8 mean, he has personal knowledge. He is a landman in the
9 special projects group at Devon. The special projects
12:33:22 10 group is tasked with managing decommissioning regarding
11 offshore assets like that. This is what his everyday job
12 is.

13 THE COURT: So your position is what?

14 MR. TABOLSKY: Our position is he has personal
12:33:35 15 knowledge regarding the issues in this case, regarding
16 Devon's positions.

17 THE COURT: All right.

18 MR. JOHNSON: And if I may, Your Honor, this
19 request equates to a request for us not to be able to put
12:33:44 20 on a case because we didn't have someone back in 1996. We
21 have to have someone speak on behalf of the corporation,
22 and play this forward as to what they're suggesting in
23 terms of mechanics.

24 THE COURT: So he has been with the company how
12:33:56 25 long? Since then?

1 MR. JOHNSON: Since 2001.

2 THE COURT: What about '96?

3 MR. JOHNSON: That --

4 THE COURT: You say he was working on rigs at
12:34:06 5 that time.

6 MR. JOHNSON: Yeah. He was in the oil field
7 business, but he wasn't with Devon. Devon had --

8 THE COURT: He joined Devon in 2000.

9 MR. JOHNSON: 2001.

12:34:15 10 THE COURT: So what is he talking about,
11 institutional history?

12 MR. JOHNSON: Yeah, institutional history
13 gained by review of business records. The contentions that
14 Devon is making in this case based on the review of
12:34:25 15 nonhearsay business records.

16 And if we play this forward, think about
17 the mechanics of what they're suggesting. They are saying,
18 you can call them to the stand live, maybe, and then you
19 can limit your testimony. And then when we go, we will
12:34:40 20 play a deposition, with him sitting right here in the
21 courtroom, on only corporate rep matters, it is going to be
22 a heroic waste of time.

23 In my 30-something trials, I have never
24 had this occur because people don't like to waste the
12:34:53 25 jury's time. He is going to be here live. We can put him

1 on the stand. We can do our direct examination, and then
2 they can cross him.

3 THE COURT: What do you say about that? You
4 going to play it if he is sitting there?

12:35:06 5 MR. BLOCK: Your Honor, if he is not permitted
6 to testify to these matters, I don't know whether we will
7 use his deposition or not, but what that would be is the
8 deposition of Devon, not the deposition of Mr. Casey. And
9 this is done in trials all the time.

12:35:22 10 So what he has proposed --

11 THE COURT: How often?

12 MR. BLOCK: Well, I can think of three that I
13 have been involved in, Your Honor. So when --

14 THE COURT: What about the alternative? The
12:35:32 15 judge is saying, no, put him on.

16 MR. BLOCK: So I have never seen, because I
17 don't believe the rules permit it, a Court -- a Court allow
18 a corporate representative, who has specifically disclaimed
19 personal knowledge, to testify.

12:35:45 20 What's interesting, Your Honor, is that
21 they have said they want to present their contentions
22 through Mr. Casey. And so, there is no parade of horrors
23 about wasting the Court's time. If they want to present
24 their contentions about what the 1996 contract means,

12:36:00 25 Mr. Johnson can do that in argument.

1 THE COURT: All right.

2 MR. BLOCK: But to have a fact witness -- I beg
3 your pardon, Your Honor.

4 THE COURT: No, it's all right. Hang on a
12:36:08 5 second.

6 All right. Number 8 states, Defendant
7 moves to preclude plaintiff from presenting any testimony
8 from Devon's corporate representatives.

9 MR. BLOCK: That is correct, Your Honor,
12:36:25 10 because Mr. Casey has no percipient knowledge that is
11 relevant to this case.

12 THE COURT: Okay. Got it.

13 All right. Any question -- last one. Any
14 question to witnesses about statements made by counsel
12:36:39 15 during voir dire or opening statements?

16 MR. BLOCK: This was agreed on the record at
17 the prior conference.

18 MR. JOHNSON: We have an agreement for this
19 one, Your Honor.

12:36:47 20 THE COURT: Granted by agreement?

21 MR. BLOCK: Correct. Do you need the
22 transcript cite?

23 THE COURT: No.

24 MR. BLOCK: Okay.

12:36:57 25 THE COURT: Okay. Now, we are going on to what

1 is plaintiff's motion to strike testimony of -- on this
2 guy -- what is it -- Thomas Cubbage and Marvin Smith.
3 Ex-employees, no relevant testimony, said confuse the jury,
4 contentions are like defendant's motion in limine regarding
5 many of the plaintiff's own witnesses.

12:37:24

6 This is what I mean. This sounds like a
7 motion in limine also. Okay? So this is plaintiff's
8 motion to strike testimony. So we're talking about these
9 two guys.

12:37:39

10 All right. What is your position?

11 MR. YEGPARIAN: Absolutely, Your Honor, and I
12 understand the Court's question about it being a motion in
13 limine, but it is a motion to strike.

14 THE COURT: Yeah. All right.

12:37:49

15 MR. YEGPARIAN: And the reason why is both
16 Mr. Cubbage and Mr. Smith --

17 THE COURT: Right.

18 MR. YEGPARIAN: -- have affirmatively, under
19 oath, in their depositions, disclaimed any personal
20 knowledge, percipient personal knowledge of Santa Fe.

12:37:59

21 THE COURT: Where are they? Who are these
22 guys?

23 MR. YEGPARIAN: These are -- so one gentleman
24 is an attorney for Conoco, in the early 1990s, before the
25 contract.

12:38:14

1 THE COURT: And being called as what? Adverse
2 witness or a witness, or -- by you? By what -- for what
3 are you -- what reason?

4 MR. YEGPARIAN: So Chevron wants to call them
12:38:25 5 in their case --

6 THE COURT: Okay.

7 MR. YEGPARIAN: -- for reasons, I don't know
8 why. But the fact of the matter is these gentlemen do not
9 work for Chevron or Devon's predecessors. They work for
12:38:37 10 Conoco. They were not involved in the contract that's at
11 issue in this lawsuit. They have disclaimed having
12 personal knowledge of Chevron and Devon's predecessors.
13 One gentleman retired before the CCA was signed, and they
14 are going to come in, and they are going to --

12:38:57 15 THE COURT: Talking about Conoco -- and it's --
16 I am looking down here. I am jumping ahead to Exhibit 114.
17 ConocoPhillips now are incurring the costs, right?

18 MR. YEGPARIAN: Yes, Your Honor. They are the
19 operator for the well, and so BSEE has charged them with
12:39:17 20 leading the charge on decommissioning.

21 But again, these gentlemen had not -- were
22 not even working for Conoco at the time. At least one of
23 them was not working for Conoco at the time the contract
24 was signed. There is no testimony from them that they
12:39:33 25 reviewed the contract or have anything to say about the

1 contract.

2 THE COURT: So you don't know why they are
3 being called?

4 MR. YEGPARIAN: Exactly.

12:39:40 5 THE COURT: Did you take their depositions?

6 MR. YEGPARIAN: We did, Your Honor.

7 THE COURT: Well, what was the result of the
8 depositions?

9 MR. YEGPARIAN: That they had no personal
12:39:47 10 knowledge.

11 THE COURT: So what were they there for? What
12 was their understanding why they're coming to court at all?

13 MR. YEGPARIAN: It was -- Chevron noticed their
14 depositions, so I share the Court's concern.

12:39:56 15 THE COURT: Are they on the witness list?

16 MR. YEGPARIAN: They're on Chevron's witness
17 list.

18 THE COURT: All right. What do you want these
19 guys for?

12:40:02 20 MR. BLOCK: First of all, these gentlemen have
21 been called -- they are not available witnesses so they'll
22 testify by deposition, and we have disclosed the
23 designations so Devon knows exactly what the content --

24 THE COURT: Hold it. Why aren't they available
12:40:12 25 now?

1 MR. BLOCK: They are in Oklahoma, Your Honor.

2 THE COURT: Okay. Go on. I don't want to try
3 a case just by deposition.

4 MR. BLOCK: No. We prefer --

12:40:20 5 THE COURT: How long are their depositions?

6 MR. BLOCK: I don't have those numbers in front
7 of me, but I believe it's in the realm of 45 minutes to
8 half-an-hour for each of them.

9 THE COURT: Okay. Do they have cross on there?

12:40:31 10 MR. BLOCK: There is cross. They were
11 questioned by both parties. They were fully examined. I
12 don't think there is a question about --

13 THE COURT: What do you need them for?

14 MR. BLOCK: So these gentlemen worked for
12:40:39 15 Phillips at the time of the sale by all of the owners of
16 the lease.

17 THE COURT: Okay. Where does Phillips come
18 into this?

19 MR. BLOCK: Phillips was the operator on this
12:40:45 20 lease in 1991. So in 1991 --

21 THE COURT: By "operator" you mean what?
22 Drilling?

23 MR. BLOCK: Yeah. Correct, Your Honor. I
24 believe that's right. The operator generally with these
12:40:55 25 leases when multiple parties hold an interest, one will be

1 designated the operator; and that entity takes the lead in
2 interactions with the government and actually does the work
3 of operating, extracting the resources.

4 THE COURT: All right.

12:41:09 5 MR. BLOCK: So Phillips was in the lead.

6 Santa Fe was a minority --

7 THE COURT: What do you need them for?

8 MR. BLOCK: -- interest holder.

9 These gentlemen have percipient knowledge
12:41:18 10 of the transaction that occurred in 1991, and they speak
11 to --

12 THE COURT: Were they there at the time?

13 MR. BLOCK: Yes. Mr. Smith was the primary
14 representative for Phillips in negotiating the transfer of
12:41:29 15 the lease.

16 THE COURT: From who to who?

17 MR. BLOCK: So Phillips transferred its share
18 of the lease to Signal Hill, simultaneous with the transfer
19 of Devon's predecessor's share to Signal Hill. In the 1991
12:41:45 20 transaction four owners, lead by Phillips, all

21 simultaneously sold their interests to this third party
22 Signal Hill subject to approval by the government, which
23 involved negotiations about --

24 THE COURT: Did they get approval?

12:41:58 25 MR. BLOCK: And they got approval on very

1 specific conditions that bear directly on the understanding
2 of the parties when they entered the CCA in 1996. So these
3 witnesses who, by the way, have submitted declarations to
4 the government in that IBLA proceeding on behalf of Devon,
5 among others, speaking as co-owners, will testify to the
6 content of those declarations which describe what --

7 THE COURT: What --

8 MR. BLOCK: -- the contemporaneous and
9 expressed understandings were in 1991.

10 THE COURT: What's the relevance?

11 MR. BLOCK: It's relevant, Your Honor, because
12 when we asked: How shall we interpret the contract in 1996
13 with respect to obligations based on a lease that was
14 transferred away in 1991? I know Your Honor is not yet
15 steeped in all the facts of the case, but it is very --

16 THE COURT: I am getting there.

17 MR. BLOCK: Yes, Your Honor. It's very
18 important to understand the way the regulatory history
19 worked in order to understand what was the state of mind of
20 the parties who entered that deal in 1996.

21 THE COURT: Okay.

22 MR. BLOCK: And a key --

23 THE COURT: Is that relevant?

24 MR. YEGPARIAN: No.

25 THE COURT: Why?

1 MR. YEGPARIAN: Because they're offering
2 third-party witnesses who had no --

3 THE COURT: Third party?

4 MR. YEGPARIAN: Yes, for Conoco.

12:43:13 5 THE COURT: They weren't involved at all?

6 MR. YEGPARIAN: They were not Conoco or
7 Phillips. Mr. Smith, Mr. Cabbage, were not involved in the
8 contract. They weren't involved in the negotiation of the
9 contract.

12:43:21 10 THE COURT: So what do you feel they are being
11 called for?

12 MR. YEGPARIAN: I don't know. I don't think
13 they're relevant. They're not --

14 THE COURT: Okay.

12:43:27 15 MR. YEGPARIAN: They can't -- oh, I apologize.

16 THE COURT: No. All right. I'm not sure
17 either. So tell me about it. Break it down. Make it
18 simple. What do you need these guys for?

19 MR. BLOCK: These guys negotiated on behalf of
12:43:38 20 Devon's predecessor in 1991 with the government. Their
21 understanding of that transaction, which was the sale of
22 the lease at issue in this case, bears on the understanding
23 of the parties with respect to that lease in 1996.

24 THE COURT: What's the relevance of that?

12:43:58 25 MR. BLOCK: The relevance, Your Honor, will

1 be they -- their testimony will stand for the proposition
2 that this lease was transferred away in 1991 under
3 conditions with government approval that everybody
4 understood in the industry at the time meant Santa Fe,
5 Devon's predecessor, no longer had any obligation with
6 respect to this lease.

7 THE COURT: Let me ask you this: You play
8 their testimony, how is the jury going to understand that?

9 MR. BLOCK: They will understand it, Your
10 Honor --

11 THE COURT: How?

12 MR. BLOCK: Because the questions are
13 contextualized.

14 THE COURT: What do you mean by that?

15 MR. BLOCK: Well, I mean that -- Your Honor, we
16 took these witnesses' deposition testimony. We asked them
17 questions about issues in this case, and they will hear
18 those depositions. As a part of the course of the evidence
19 in the case, there will be opening statements describing
20 what the evidence will show. There will be closing
21 arguments that describe the relevance of the evidence to
22 the parties' positions in the case.

23 THE COURT: So you're dealing with the opening
24 and the closing rather than the evidence that you -- you
25 will be explaining to them what they should have gotten out

1 of the testimony, right?

2 MR. BLOCK: Well, Your Honor, only to the exact
3 same sense as --

4 THE COURT: I am not saying that you shouldn't.
5 That's the role --

12:45:09

6 MR. BLOCK: Of argument, right.

7 THE COURT: -- but why do you have to explain
8 it to them at all?

9 MR. BLOCK: I think they may understand it from

12:45:15

10 watching it, and the argument will be a chance to drive
11 home its relevance, Your Honor.

12 THE COURT: Okay. Both of them are by video,
13 right?

14 MR. BLOCK: Correct. Short videos, Your Honor.

12:45:23

15 THE COURT: How long?

16 MR. BLOCK: I believe it's 30 to 45 minutes for
17 each of them.

18 THE COURT: No. Is that how much time you are
19 going to offer? Were the cross-examination on there?

12:45:32

20 MR. BLOCK: That includes -- that amount of
21 time includes both our designations and
22 counter-designations. There will or there may be some
23 objections for Your Honor to review, but the Court will be
24 able to look at those in context.

12:45:42

25 So, for example, if there's a relevance

1 objection to some portion of it, your court will have --
2 Your Honor will have a chance to look at that. We think
3 you will find that the testimony is relevant.

4 MR. YEGPARIAN: Your Honor?

12:45:53 5 THE COURT: Yes, sir.

6 MR. YEGPARIAN: We're talking about an
7 hour-and-a-half for two witnesses who have nothing to say
8 to this jury about a contract.

9 THE COURT: Who is putting it on?

12:46:04 10 MR. YEGPARIAN: Chevron is putting it on.

11 THE COURT: It is their time, right?

12 MR. YEGPARIAN: It's -- it is their time, which
13 is fine, but the concern for all of us is the heroically
14 confusing issues that this is going to raise because these
12:46:17 15 aren't Devon and Chevron's predecessors. These are third
16 parties who are going to come in -- and what I am hearing
17 from Chevron is -- opine on Santa Fe and Monterrey's
18 understanding of a contract.

19 So we are going to have third parties come
12:46:32 20 in and say this is what these two other people that we had
21 nothing to do with, this is what they meant in their
22 contract.

23 THE COURT: That sounds like a jury argument to
24 me.

12:46:41 25 MR. YEGPARIAN: Well, I think it is so

1 egregious that it is kind of, as we have been talking
2 about, it crosses a line. These gentlemen don't have
3 personal knowledge at all. And that's a jury argument, but
4 it is also going to be really confusing.

12:46:54 5 MR. JOHNSON: Well, and more importantly and to
6 the point, it is a relevance argument.

7 MR. YEGPARIAN: And it's --

8 THE COURT: Now, is a relevance argument a
9 matter of law? Or is it the law of the case? Or it's up
10 to the Judge? What do you think?

11 MR. YEGPARIAN: Well, it's an evidentiary
12 concern, so it's certainly up to Your Honor's discretion.

13 THE COURT: Uh-huh.

14 MR. YEGPARIAN: But, again, this is -- as the
12:47:13 15 discussion we're having right now is hitting on, these
16 gentlemen aren't going to -- I mean, and to Mr. Johnson's
17 point, our contract says, "known and unknown liabilities,"
18 and these gentlemen are going to come in and say, Well,
19 this liability wasn't transferred in the contract. That is
12:47:30 20 irrelevant. And that is going to confuse the jury to start
21 reading in terms into the contract that aren't there. And
22 compounding that is the fact that these guys were not
23 involved in the contract. They weren't involved in Devon
24 and Chevron's predecessors.

12:47:47 25 MR. BLOCK: Just --

1 MR. YEGPARIAN: So all of these issues compound
2 one another, and it's precisely why we should not be
3 hearing from these gentlemen.

4 THE COURT: Hang on.

12:48:13 5 All right. What do you say? You want to wrap
6 it up on this one?

7 MR. BLOCK: Sure. One more point that Your
8 Honor should be aware of is that when Devon was explaining
9 to the IBLA in the federal administrative proceeding what
12:48:24 10 has happened in the relevant history, they relied on the
11 exact testimony from these exact witnesses that we will
12 present.

13 So they have recognized that those -- the
14 testimony of the employees of the operator of the lease on
12:48:38 15 which they had an interest is relevant to their history.

16 Your Honor, these witnesses will give
17 relevant testimony. You'll have a chance to look at those
18 deposition designations before they go up. It will be our
19 time. There is simply no prejudice at all, and the notion
12:48:55 20 that because they were the operator on the lease instead of
21 Santa Fe who had designated them the operator, that they
22 don't have relevance to the issues in this case, as it
23 should be understood in the 1990s, is -- well, it's
24 incorrect, Your Honor.

12:49:10 25 MR. YEGPARIAN: Your Honor?

1 THE COURT: Yes.

2 MR. YEGPARIAN: It's prejudicial.

3 THE COURT: Why?

4 MR. YEGPARIAN: Because it confuses the issues
12:49:17 5 concerning the indemnity.

6 THE COURT: Say that -- it confuses the issue
7 relative to indemnity?

8 MR. YEGPARIAN: The indemnity that is at the
9 core of this lawsuit covers a broad swath of claims, known
12:49:31 10 and unknown, and it covers it in terms of defense and
11 indemnity. These gentlemen are going to be put on to say
12 well, at the time -- I don't know how we get there, but I
13 believe Chevron's proffer is at the time, no one thought
14 this liability existed. That's irrelevant.

12:49:48 15 It's irrelevant, because we have an
16 indemnity, a forward-looking indemnity that covers all
17 claims arising in the future, known or unknown. So, again,
18 this crosses the line because these gentlemen who have
19 nothing to do with either predecessor, can't tell us
12:50:06 20 anything of use at all with respect to the contract.

21 MR. BLOCK: Your Honor, you made the point that
22 that sounds like argument, and that is the argument that
23 they will make, but the relevance of this testimony will be
24 clear, and it will bear directly on the decision the jury
12:50:21 25 has to make about how to understand what was in the minds

1 of the parties who entered the 1996 contract.

2 THE COURT: I got it. As best I can. No. No.
3 I understand where it's at. It's do you let these guys on?
4 All right. I'll make that ruling.

12:50:40 5 MR. BLOCK: Thank you, Your Honor. And I will
6 just say again, it's by deposition so there is no question
7 about what is being submitted. And, in fact, we have the
8 transcript. You will be able to review it in context.

9 THE COURT: How many pages is that transcript?
12:50:51 10 I am not going to read the whole thing.

11 MR. BLOCK: Fair enough, Your Honor. I don't
12 know how much the -- 30 to 45 minutes total.

13 THE COURT: About 40 minutes, about a minute a
14 page.

12:50:59 15 MR. BLOCK: Your Honor, that is right. We can
16 make a proffer, if you prefer, but it's set -- it's set
17 forth in the brief. And as you see the trial unfold,
18 obviously, these people will be --

19 THE COURT: When are you going to call these
12:51:11 20 guys?

21 MR. BLOCK: In our case, Your Honor.

22 THE COURT: Where? Oh, in the defense case.

23 MR. BLOCK: Correct.

24 THE COURT: All right. Let's see plaintiff's
12:51:19 25 motion to permit live Zoom testimony of Roy Hathcock. I

1 think he is overseas, right?

2 MR. JOHNSON: Correct, Your Honor.

3 THE COURT: All right. Who is he?

4 MR. JOHNSON: Roy Hathcock, there was

12:51:30 5 discussion of him earlier in the hearing about his
6 testimony. He is involved in the decommissioning process.
7 He knows custom and practice, so on and so forth.

8 THE COURT: He is an employee of who?

9 MR. JOHNSON: Devon.

12:51:44 10 THE COURT: Okay.

11 MR. JOHNSON: Here is the issue: Mr. Hathcock
12 made travel arrangements based on the July trial setting to
13 travel to see his missionary daughter for the birth of his
14 grandchild. It is a 20-hour trip. He made those travel
12:52:02 15 plans based on the last trial setting.

16 As you will recall, just prior to the last
17 trial setting, Chevron moved for a continuance to try to
18 ensure the live testimony of Mr. Whaling, who is now being
19 deposed Friday -- or excuse me, is going to be testifying
12:52:24 20 Friday at 10:30 a.m.

21 However, during the last trial setting,
22 Mr. Whaling was available. I had discussions with his
23 counsel, if we could accommodate his treatment schedule,
24 which was fine. I also made the offer that we could
12:52:38 25 present Mr. Whaling by deposition, if for some reason that

1 interfered with his treatment schedule.

2 So we get to the last pretrial and just
3 prior to the last pretrial, a motion for continuance is
4 made by letter to the Court saying we need Mr. Whaling here
12:52:58 5 live, he is our most important witness, et cetera, et
6 cetera.

7 I filed a letter to the Court indicating
8 my opposition to the continuance because the first setting
9 ensured that every one could be there live, and I had

12:53:08 10 concerns about work plans, travel plans, and --

11 THE COURT: How about this guy?

12 MR. JOHNSON: Excuse me?

13 THE COURT: How about this guy now?

14 MR. JOHNSON: So this guy now has traveled to
12:53:19 15 southeast Asia to visit his missionary daughter for the
16 birth of their child. I made the offer to the opposition,
17 Hey, we will present him by Zoom. That was opposed. Even
18 though that conflict was created by their continuance so
19 they could get Mr. Whaling here live.

12:53:40 20 THE COURT: Okay. You want to respond, please?

21 MR. ROUHANDEH: Yes, Your Honor. Mr. Hathcock
22 is an unavailable witness, and the transcript of his
23 deposition can be used, like any case when somebody is
24 unavailable.

12:53:53 25 There is not good cause for him to appear

1 by video conference, and they have known since April. They
2 didn't tell us, but they have known since April that
3 Mr. Hathcock would not be available in September.

4 THE COURT: Since April?

12:54:07 5 MR. ROUHANDEH: Since April. He just went on
6 vacation to visit his -- his family last week. Six weeks
7 or so -- eight weeks -- well, closer to six weeks after the
8 Court set a trial date, he left. And they have the
9 videotape.

12:54:29 10 THE COURT: You are saying why do -- you want
11 to use -- or have them use a deposition?

12 MR. ROUHANDEH: Use the deposition.

13 THE COURT: Is it a video deposition?

14 MR. ROUHANDEH: A video deposition. Instead
12:54:39 15 of -- because there is a rule, there is a federal rule with
16 respect to --

17 THE COURT: What is the rule number?

18 MR. ROUHANDEH: It's Rule 43.

19 THE COURT: All right. Hang on. Let me find
12:54:48 20 43. Which rule? Rule of Civil Procedure or --

21 MR. ROUHANDEH: Yes, Civil Procedure, Rule 43.

22 THE COURT: Again 4-3?

23 MR. ROUHANDEH: Yes.

24 THE COURT: All right. Let me get it.

12:55:15 25 Okay. All right. What about 43?

1 MR. ROUHANDEH: It says that in order to have
2 someone testify by contemporaneous transmission from a
3 different location --

4 THE COURT: Which -- what subsection?

12:55:28 5 MR. ROUHANDEH: It's (a). It's (a).

6 THE COURT: Okay. Let me just read it.

7 MR. ROUHANDEH: Okay.

8 THE COURT: I do better reading it out loud in
9 open court. "At trial the witness's testimony must be
12:55:38 10 taken in open court unless a federal statute, the Federal
11 Rules of Evidence, these rules or other rules adopted by
12 the Supreme Court, provide otherwise. For good cause and
13 compelling circumstances, and with appropriate safeguards,
14 the Court may permit testimony in open court by
12:55:57 15 contemporaneous transmission from a different location."

16 Why would you want to take it -- why would
17 you want to have them put the evidence on by deposition if
18 we can get the guy live on TV?

19 MR. ROUHANDEH: Because contemporaneous -- as
12:56:14 20 the notes to -- and as courts have cited, the notes to this
21 rule make very clear --

22 THE COURT: Okay.

23 MR. ROUHANDEH: -- that contemporaneous
24 transmission -- and I'll read from the notes:
12:56:25 25 Contemporaneous --

1 THE COURT: The notes, what is that? The --

2 MR. ROUHANDEH: This is the advisory committee
3 notes with respect to the 1996 amendment, that allowed
4 contemporaneous transmission of testimony.

12:56:35 5 It says, "Contemporaneous transmission of
6 testimony from a different location is permitted only on
7 showing good cause in compelling circumstances. The
8 importance of presenting live testimony in court cannot be
9 forgotten. The very ceremony of trial and the presence of
12:56:55 10 a factfinder may exert a powerful force for truth telling.
11 The opportunity to judge the demeanor of a witness
12 face-to-face is accorded great value in our tradition.
13 Transmission cannot be justified merely by showing that it
14 is inconvenient for the witness to attend the travel."

12:57:12 15 What we have here is, we do not have good
16 cause or compelling circumstances. We have a situation
17 where an unavailable witness should appear by deposition.

18 THE COURT: Okay.

19 MR. ROUHANDEH: The difficulties of
12:57:23 20 contemporaneous transmission, you know, cannot be
21 underestimated, and the courts have looked at those
22 difficulties. And in this case, we're talking about
23 somebody who is half a world a way in southeast Asia.

24 It would really prejudice -- and this is
12:57:36 25 something else the courts have looked at. It would really

1 prejudice our cross-examination of him for him to appear
2 live by Zoom. What documents are we going to use with him?
3 Are we going to ship the documents to southeast Asia in
4 advance so that he has them in front of him? Or are we
12:57:53 5 going to do them, you know -- you know, on -- somehow
6 through video, and confront him?

7 And this is going to be a huge waste of
8 the jury's time. This is somebody who could have
9 appeared -- could appear, could have not taken his
12:58:07 10 vacation. He's a controlled witness, a corporate rep
11 witness, corporate representative, and then in
12 Mr. Johnson's words at the last conference, a controlled
13 witness.

14 And if they didn't want -- or for his only
12:58:23 15 inconvenience, or whatever else, they didn't want him to
16 appear live, then we should do what we do in every case,
17 which is when the witness is unavailable -- when the
18 witness is unavailable, they appear by deposition.

19 There is -- and at the time of the last
12:58:35 20 conference, and this is -- Mr. Johnson's letters weren't
21 clear on this, I said that September might be a date when
22 the -- all the witnesses might be available. Mr. Johnson
23 said he didn't think that was the case, and Your Honor,
24 said, I don't think we are going to find a date where
12:58:57 25 everybody is available.

1 This issue, although without
2 Mr. Hathcock's name, this issue was fronted before the
3 Court set a trial date, and then fast-forward six, seven
4 weeks, and Mr. Hathcock goes on -- on vacation, their
12:59:12 5 controlled witness and corporate representative. We
6 shouldn't be prejudiced without -- with having to examine
7 him through Zoom testimony.

8 THE COURT: Why is it easier by deposition than
9 by taking him live by video?

12:59:27 10 MR. ROUHANDEH: Well, it has all been done and
11 the logistics and all that have already been handled by
12 virtue of the deposition.

13 THE COURT: Have you agreed on what portions
14 are admissible?

12:59:37 15 MR. ROUHANDEH: I don't think we have
16 necessarily agreed. I think until -- until these -- they
17 waited -- and, again, they waited until mid August, just
18 very recently, to even raise this issue with us. So there
19 hasn't been a discussion of what portions that we could
12:59:52 20 agree on that would be played.

21 But I -- we think it is going to waste
22 jury time, and it is going to prejudice us for a witness
23 who -- and a corporation that made a decision to allow
24 their witness to not be available for trial.

01:00:05 25 THE COURT: Okay.

1 MR. ROUHANDEH: And it is a very unusual
2 circumstance and in the cases, this type of thing, the
3 videotaped depositions are typically what is -- what is
4 used, instead of a live transmission.

01:00:16 5 THE COURT: Okay. Want to wrap it up on this
6 one?

7 MR. JOHNSON: Yeah. I have got a lot to say,
8 but I'm going to try to keep it to bullet points, Your
9 Honor.

01:00:23 10 The first thing I heard was that we didn't
11 tell them in April about his travel plans. They moved for
12 a continuance on June 30th. What were we supposed to say,
13 hey, just by the way, we have got a witness who has made
14 very expensive personal travel plans to visit his
01:00:42 15 missionary daughter who is having a kid during a trial term
16 that hypothetically you may seek?

17 He was available last trial term. When
18 they did move for a continuance, we informed the Court
19 within eight hours that we had a scheduling issue with this
01:00:59 20 witness, and they got that letter.

21 He cited a rule from 1997 about how this
22 would be prejudicial. I am not even sure Zoom existed in
23 1997. We are in a new day, age, and time, and the evidence
24 of that, Your Honor, is they took every single one of their
01:01:18 25 depositions via Zoom. So they sure know well and good how

1 to use documents with Zoom.

2 THE COURT: So what are -- hold on. Hold it.

3 Hathcock was taken by Zoom --

4 MR. JOHNSON: Yep.

01:01:29 5 THE COURT: -- depo?

6 MR. JOHNSON: Yep.

7 THE COURT: Not in person?

8 MR. JOHNSON: No.

9 THE COURT: Okay. All right. Go on. Anything
01:01:35 10 else?

11 MR. JOHNSON: Yeah. The case they cite as to
12 how inconvenience isn't a basis for presenting a witness in
13 this fashion -- first of all, if you'll read the brief. We
14 filed it, I believe, this morning -- no, we filed it on
01:01:54 15 Friday.

16 Rule 43 clearly contemplates presenting
17 evidence in this fashion. The case they cited involved a
18 witness who refused to travel from Colorado to Kansas for
19 deposition. Okay?

01:02:10 20 In Texas terms, that is the equivalent
21 distance of Houston to Dallas. We're talking about a guy
22 who is in southeast Asia with his grandchild who spent
23 thousands and thousands of dollars to get there. And
24 you're absolutely right. Devon as a corporation is not
01:02:27 25 going to force him to come back from that trip, but he

1 should be presented by Zoom. This is a problem of their
2 making. This is a problem of their continuance.

3 THE COURT: Okay.

4 MR. JOHNSON: Thank you.

01:02:39 5 THE COURT: You want to wrap it up?

6 MR. ROUHANDEH: Yes. Skype was invented in
7 2003 and FaceTime was invented in 2010, and Zoom was --
8 came to market in 2012. There have been -- there were,
9 back then, many available ways to get testimony.

01:03:00 10 So it is true that -- and there have been
11 for many, many -- for quite a long period of time.

12 Now, the witnesses -- the case that he is
13 referring to is, I believe, the Sinclair -- *Sinclair* case.
14 That is a case out of the District of Kansas where the

01:03:16 15 Court said, if you could -- if the party could reasonably
16 foresee the circumstances offered to justify transmission
17 of testimony, those -- that party will have special
18 difficulty in showing good cause and the compelling nature
19 of the testimony.

01:03:34 20 And then in the other case, we rely on the
21 *O'Bryant* case out of the Eastern District of Louisiana, the
22 Court said: In conclusion, the Court will not allow any of
23 these witnesses to testify via contemporaneous video
24 transmission. It previously and timely identified

01:03:51 25 witnesses cannot appear live but have been deposed, the

1 undersigned instructs all counsel to review such recorded
2 testimony as per the pretrial instruction so that the
3 testimony can be presented to the jury at trial in the form
4 of prerecorded video deposition testimony.

01:04:07

5 This is a standard issue that comes up and
6 there are numerous courts that have looked at this and
7 said, you have got the -- you've got a videotaped
8 deposition, use the videotaped deposition instead of a
9 video -- a contemporaneous transmission of testimony. And

01:04:23

10 in this case, which we believe would prejudice our
11 examination because of the difficulties associated with
12 having a witness appear by Zoom, including
13 cross-examination with documents, which we won't be able to
14 show to him --

01:04:35

15 THE COURT: Did you cross-examine him with
16 documents on the video matter?

17 MR. ROUHANDEH: Yes, we did.

18 THE COURT: How do you get around that?

19 MR. JOHNSON: Well, I think the point he

01:04:43

20 made -- that James made when he was arguing the point is
21 they didn't know how they would be able to use documents
22 and cross-examine them.

23 THE COURT: No. The question is: How do
24 you -- how do you get documents for the witness to see?

01:04:57

25 MR. JOHNSON: You can show them right on the

1 screen just like they did when they took his deposition.

2 And let me say, they're not going to be prejudiced. We are

3 going to be prejudiced. We didn't do a full trial direct

4 at the deposition because he was going to be available at

01:05:10

5 trial. What this really is, is an effort to prevent us

6 from taking a direct examination of a witness who is

7 halfway around the world, and courts regularly find that

8 significant international travel, like what Mr. Hathcock

9 would have to endure here, alone constitutes good cause for

01:05:25

10 allowing remote appearance. And the case we cite on that

11 is *Shenzhen*, Your Honor. It is in our brief. And he is

12 right. This does come up all the time.

13 THE COURT: All right.

14 MR. JOHNSON: I cross-examined three witnesses

01:05:35

15 via Zoom in trials last summer.

16 THE COURT: I got it. All right. I got to

17 take a break because I have got to meet with the probation

18 department. I don't know if I can eat anything. I may not

19 be able to. That is what you're in. Let me talk to my

01:05:52

20 staff for a second as far as when we are going to get back

21 in.

22 The next thing we will do is defendant's

23 notice of high priority objections.

24 Okay.

01:06:06

25 (Discussion off record with staff.)

1 THE COURT: All right. The schedule I have is
2 I have got to meet with probation department for 15 minutes
3 before I handle the sentencing, and then the sentencing may
4 not be a real quick thing. We are -- we are about --
01:07:04 5 almost 1:10, and the Court -- well, the court reporter, of
6 course, needs some break, maybe, okay. But I am going to
7 say we're going to get back in at 2:30, and we are just
8 going to keep going until we're done for today, including
9 looking at some of these exhibits.

01:07:31 10 And then after I am done with that, at the
11 exhibits, I will, then, take a break, and just go in the
12 office, look at these again, and put granted, overruled,
13 modified or whatever, come back and let you know.

14 Also, we need to talk about the type of
01:07:51 15 voir dire that we are doing, the length of openings, and
16 how to handle the jury panel. How much voir dire, if any,
17 each of you will get. So just think about that.

18 That is not on your time, you know. You
19 saw the time is very restricted to -- once we get underway
01:08:11 20 with your opening, and it doesn't -- it doesn't include
21 closings or whatever.

22 All right. So we are now about 1:10. We
23 will see you back, ready to resume, at 2:30. We'll see you
24 back then.

01:08:28 25 (Proceedings recessed from 1:08 to 2:46.)

1 THE LAW CLERK: All rise.

2 THE COURT: All right. Thank you. Be seated.

3 All right. The exhibits. We have a few.

4 Defendant's notice of high priority objections to -- number

02:46:04 5 one, that's plaintiff's -- oh, yeah, Exhibit 42 and 43.

6 You got copies of them?

7 MR. ANDRES: I do, Your Honor. Greg Andres for
8 Chevron.

9 THE COURT: Pardon me?

02:46:14 10 MR. ANDRES: My name is Greg Andres for
11 Chevron. Here's copies of the exhibits.

12 THE COURT: Are those the ones you object to?

13 MR. ANDRES: Yes.

14 THE COURT: Okay. Put them right over here on
02:46:27 15 this side. All right. Let me go down and check them.

16 Uh-huh. That's what I thought.

17 Now, how does -- let's see, your -- let's
18 see, I just want to highlight this. Yellow would be
19 easier.

02:47:00 20 MR. ANDRES: So 42 and 43?

21 THE COURT: Yeah. That's what I'm --

22 MR. ANDRES: So let me start there, Your Honor.

23 THE COURT: It's 42 and 43. Hang on.

24 MR. ANDRES: Sure. Let me start there. So --

02:47:08 25 THE COURT: I am not there yet.

1 MR. ANDRES: Okay.

2 THE COURT: All right. I'm saying Rules of
3 Evidence and the 408 is compromise and negotiation. I
4 always do this all the time to get back into it. 402,
02:47:31 5 general admissibility of relevant evidence. 403, relevant
6 evidence for prejudice and confusion.

7 Okay. Let me open it to that. 42. All
8 right.

9 MR. ANDRES: Okay.

02:47:54 10 THE COURT: That's -- what is it? Is the Bates
11 number at the lower right 535?

12 MR. ANDRES: I am going to address them both
13 together, Your Honor.

14 THE COURT: I know. I just want --

02:48:08 15 MR. ANDRES: Yeah, 535 and then 43.

16 THE COURT: And then 42 and 43 is 599?

17 MR. ANDRES: Correct.

18 THE COURT: All right. Now, what are they and
19 why do you object to them?

02:48:17 20 MR. ANDRES: Yeah. Thanks, Your Honor. So
21 these are Devon's demand letter to Chevron.

22 THE COURT: Okay. Now, you represent the
23 defendant, that's who filed these.

24 MR. ANDRES: Yes.

02:48:28 25 THE COURT: You object to theirs, their 42

1 and -- now, tell me what it is.

2 MR. ANDRES: Yeah. So 42 is Devon's demand
3 letter that says to Chevron, you have to indemnify us
4 pursuant to the contract. 43 is Chevron's response that
02:48:48 5 declines to do so.

6 THE COURT: So what do you need? Why do you
7 want them out?

8 MR. ANDRES: They are not admissible under the
9 federal rules, and I can hand up --

02:48:55 10 THE COURT: Just tell me why.

11 MR. ANDRES: Sure. So, Your Honor, Rule 408,
12 and courts in Texas, federal districts of Texas, preclude
13 demand letters because they're pre -- pre-lawsuit
14 discussions about the issues, about the fact of a demand,
02:49:14 15 and even if the demand is denied, it's not admissible.
16 It's precluded under 408.

17 And, again, there is this case,
18 *Mercedes-Benz*, in which plaintiff sends a letter to
19 Mercedes-Benz and says, You should buy me a new car.

02:49:30 20 Mercedes-Benz says, We decline to do so. And the Court in
21 that case ruled that 408 controls those issues.

22 THE COURT: Is that Fifth Circuit or Supreme
23 Court or what?

24 MR. ANDRES: It's the Eastern District of
02:49:42 25 Louisiana, but there are other cases that we can provide

1 for Your Honor.

2 THE COURT: That's all right. Go on.

3 MR. ANDRES: Okay. So that is one. So under
4 408, it is clearly not admissible.

02:49:52 5 THE COURT: What is it? Because it is a --

6 MR. ANDRES: Because it's settlement.

7 THE COURT: -- negotiations?

8 MR. ANDRES: It's evidence that potentially
9 verifies the existence of a claim that courts use to

02:50:03 10 preclude that. But beyond that, Your Honor, it's also
11 highly prejudicial.

12 THE COURT: Why?

13 MR. ANDRES: It's prejudicial because one of
14 the letters comes from Mr. Rouhandeh, who we don't intend
02:50:17 15 to call as a witness in this case. So what Devon is doing
16 is effectively putting in a letter from Chevron's counsel
17 that makes him, in effect, a witness on -- in this case.

18 If they were to ask questions about that document, he's
19 really the only one that could admit that or respond in any
02:50:32 20 particular way.

21 So it is prejudicial in that respect.
22 Beyond that, Judge, probably most basically, it's not
23 relevant to anything. The fact of Devon's demand and
24 the --

02:50:43 25 THE COURT: All right. So Devon wrote the

1 original letter --

2 MR. ANDRES: 42.

3 THE COURT: -- correct?

4 MR. ANDRES: Yep.

02:50:51 5 THE COURT: On this stationery and it came back
6 from --

7 MR. ANDRES: From Davis Polk.

8 THE COURT: -- the defendants -- yeah, Davis
9 Polk.

02:50:58 10 MR. ANDRES: From their lawyers.

11 THE COURT: Right.

12 MR. ANDRES: Right? So beyond that, Judge, the
13 only information that is relevant, if at all, in these two
14 letters is the fact of the demand and the fact of the
02:51:07 15 denial by Chevron, and that's a stipulated fact in the
16 pretrial order.

17 THE COURT: Okay. Let me stop you right there.
18 What's the objection to this? You want to get this in?

19 MR. YEGPARIAN: Yes, Your Honor.

02:51:20 20 THE COURT: All right. How do you get around
21 what he just said? Why do you need it?

22 MR. YEGPARIAN: Well, we need it because it
23 articulates the parties' understandings of the dispute and
24 of the contract that's at the heart of the dispute.

02:51:31 25 THE COURT: Well, what about self-serving?

1 MR. YEGPARIAN: Well, that's why we want both
2 in. That's why we want ours and we want theirs in
3 together. And, Your Honor, before we get to any of this,
4 these two exhibits were on Chevron's exhibit list back when
5 we filed our pretrial order.

02:51:47

6 THE COURT: They were on your exhibit list?

7 MR. ANDRES: Your Honor --

8 THE COURT: What puts it -- okay. Hang on. We
9 are going back and forth.

02:51:55

10 MR. ANDRES: So this is -- this is a point that
11 Devon brought up repeatedly that simply because they're on
12 our list they're admissible, but here is what Devon says in
13 their exhibit list. It says: Devon does not admit that
14 documents are admissible and specifically reserves
15 objection. This is their exhibit list.

02:52:11

16 THE COURT: No. I don't understand this now.
17 Why did you list them and now you're objecting to them?

18 MR. ANDRES: Both parties listed them and both
19 parties put caveats on their exhibit list that said, the
20 fact that something is on the exhibit list alone does not
21 necessarily mean they're admissible. So, yes, we put it
22 on, but upon examination --

02:52:25

23 THE COURT: Is that something new? I have not
24 seen that before.

02:52:36

25 MR. ANDRES: It's -- it's right here, Your

1 Honor.

2 THE COURT: No. No. No. I know it exists,
3 but I have not seen this point come up.

4 MR. ANDRES: Well, I was surprised -- I was
02:52:45 5 surprised to see Devon so strenuously objecting to the fact
6 that -- or the fact that it's on a witness list. I mean,
7 presumably they understand that --

8 THE COURT: Well, anybody -- has anybody
9 withdrawn them?

02:52:55 10 MR. ANDRES: We'll --

11 THE COURT: How many things -- because some of
12 these, if you bring them up during trial, I'll rule on them
13 during trial.

14 MR. ANDRES: Fair.

02:53:02 15 THE COURT: Why would it be on -- again, I
16 don't know.

17 MR. ANDRES: Right.

18 THE COURT: I have not seen this before. I
19 have been around here 37 years, and then before that on the
02:53:12 20 state court. I have not seen where both parties had it
21 listed and now one's objecting to it.

22 MR. ANDRES: Right. Well, Your Honor, we --
23 upon review, we decided we're happy to withdraw it.

24 THE COURT: When --

02:53:25 25 MR. ANDRES: So the fact -- but the fact that

1 it is on there alone certainly doesn't meet the hurdle that
2 it -- that it's pursuant -- that it's admissible pursuant
3 to the Federal Rules of Evidence.

4 THE COURT: Then why did you -- what do you
02:53:37 5 want the Judge to do it on his or her own?

6 MR. ANDRES: Well, yes. We're asking you to
7 exclude it under Rule 408 because the case law requires
8 that these documents not be admitted at trial. That's what
9 the case law --

02:53:49 10 THE COURT: But you have it on your exhibit
11 list?

12 MR. ANDRES: We are going to remove it. We
13 made a mistake, Your Honor. There are hundreds of
14 documents in this case. Upon review we've decided --

02:53:59 15 THE COURT: And they're not all admissible,
16 unless you think they are.

17 MR. ANDRES: Well, that's not -- that's clearly
18 what Devon has said. Devon has said just because we put a
19 document on our exhibit list -- Devon, not Chevron, we said
02:54:08 20 it, too, if we put a document on our exhibit list --

21 THE COURT: So how many other things here on
22 this exhibit list are you going to withdraw because I've
23 just not seen this before.

24 MR. ANDRES: This is the only one that I'm
02:54:20 25 aware of, Your Honor.

1 THE COURT: How many exhibits you got?

2 MR. ANDRES: 100? How many?

3 MS. STERN: 37. Our list is 37.

4 MR. ANDRES: And how many on their list?

02:54:32 5 We have 37, approximately. They have in
6 excess of 100. So we have one document that we will
7 withdraw from our exhibit list. But, look, Your Honor, my
8 point is simply this: That it is on an exhibit list does
9 not mean it is admissible.

02:54:46 10 THE COURT: I never heard that before. I mean,
11 yeah, I have heard it before with the other side coming in
12 and objecting to it.

13 But you had it on your list and he has got
14 it on his list, and now you are going to withdraw it and
02:54:59 15 object to it being on his list.

16 MR. ANDRES: Because there is a rule of
17 evidence in case law that precludes its admission.

18 THE COURT: So why did you submit it in the
19 first place?

02:55:08 20 MR. ANDRES: We -- we probably shouldn't have.
21 I don't know if we made a mistake, but upon reviewing our
22 exhibits as we're getting ready for trial, we --

23 THE COURT: I was going to say -- now, nobody
24 take this -- just raise your hand if it was you who put it
02:55:20 25 in there.

1 (Laughter.)

2 THE COURT: Okay.

3 MR. ANDRES: Fair enough, Your Honor. My only
4 point is, look, there are --

02:55:27 5 THE COURT: All right. You are withdrawing it
6 now?

7 MR. ANDRES: Yes.

8 THE COURT: And you object to them using it?

9 MR. ANDRES: Pursuant to Rule 408.

02:55:32 10 THE COURT: All right.

11 What is your response, please?

12 MR. YEGPARIAN: Okay. So, first, I have a hard
13 time following the objections 402 --

14 THE COURT: Oh, so did I. Go on.

02:55:42 15 MR. YEGPARIAN: -- 403 considering --

16 MR. ANDRES: I am happy to restate them, Your
17 Honor.

18 THE COURT: No, no. I don't need you to
19 restate. I got it.

02:55:47 20 Go on.

21 MR. YEGPARIAN: So clearing the obvious
22 elephant in the room which is they thought this was all
23 admissible initially three months ago, and we have been
24 preparing with these exhibits in mind, 408, it's not a

02:56:00 25 settlement offer. It's not stamped 408. I mean, that's

1 standard.

2 THE COURT: What is it, a demand letter?

3 MR. YEGPARIAN: Yes, Your Honor.

4 THE COURT: And what's the response, if I read

02:56:10 5 right at the end of 43, I went all the way to the end, and

6 they said that they're rejecting it.

7 MR. YEGPARIAN: Correct.

8 THE COURT: For the foregoing reasons, among

9 others, Chevron is not responsible for, and is not

02:56:22 10 obligated to defend or indemnify them --

11 MR. ANDRES: Correct.

12 THE COURT: -- for any costs that may -- so

13 they are saying no.

14 So is it -- it's a demand -- what does it

02:56:33 15 say?

16 MR. ANDRES: It's a rejection of the demand and

17 under the case law --

18 THE COURT: All right. I know. Wait a second.

19 Hang on a second. It always helps to read it. I read

02:56:42 20 quickly.

21 Well, they said that -- all right. Now,

22 what kind of a letter do you say this is?

23 MR. YEGPARIAN: This is a tender of defense. A

24 demand that tenders --

02:57:19 25 THE COURT: Demand for defense and indemnity,

1 that's what we're here on.

2 MR. YEGPARIAN: That is exactly right, Your
3 Honor. And that tender --

4 THE COURT: Is that not a settlement?

02:57:27 5 MR. YEGPARIAN: No, Your Honor.

6 THE COURT: That is a demand letter.

7 MR. YEGPARIAN: That is a demand letter, a
8 tender of defense and indemnity.

9 THE COURT: Is that still admissible?

02:57:37 10 MR. YEGPARIAN: Yes, Your Honor.

11 THE COURT: How and why?

12 MR. YEGPARIAN: It contextualizes the dispute,
13 it articulates Chevron and Devon's understanding of both
14 the contract -- and more importantly, the liability that we
02:57:46 15 are here to talk about.

16 THE COURT: All right.

17 MR. ANDRES: Your Honor, that is what this
18 trial is for. This trial not to have Mr. Rouhandeh provide
19 evidence about what the plaintiffs -- the -- Chevron's
02:57:58 20 position is. Presumably we are going to hear that from
21 this witness stand, and the 100 and something documents
22 they are going to admit. But Mr. Rouhandeh --

23 THE COURT: They are going to try to admit in.
24 Mr. Rouhandeh may not --

02:58:11 25 MR. ANDRES: Well, if Mr. Rouhandeh is going to

1 be a witness in this case, he hasn't been listed on any
2 witness list.

3 THE COURT: I will tell you this: I got it. I
4 got it, and I'll rule on it.

02:58:19 5 MR. ANDRES: Thank you, Your Honor.

6 THE COURT: The next one, of Plaintiff's
7 Exhibit 50, you object to.

8 MR. ANDRES: Yes.

9 THE COURT: And pull that out.

02:58:26 10 MR. ANDRES: So, Your Honor --

11 THE COURT: Hold it. Let me get it, first.
12 It's Plaintiff's 50. Mr. Hathcock. Okay. And it's --
13 what is it -- Carpinteria P&A -- and what is this?

14 MR. ANDRES: Sure. So this is an e-mail from
02:58:47 15 Mr. Hathcock to others --

16 THE COURT: Who is Hathcock?

17 MR. ANDRES: Mr. Hathcock, we heard about
18 earlier. He's our Zoom fellow.

19 THE COURT: I know who he is. What is his
02:58:55 20 position?

21 MR. ANDRES: He is a consultant for Devon who
22 has been proposed to testify about various --

23 THE COURT: Okay. Go on.

24 MR. ANDRES: So he is writing an e-mail to
02:59:04 25 others about a meeting that he had with ConocoPhillips in

1 which he is talking about the abandonment process, and most
2 notably he is talking about the estimate that it's \$303
3 million to pay for the decommissioning.

4 So, obviously, it's hearsay, A; even if B,
02:59:22 5 it's a business record, there is hearsay within hearsay.

6 THE COURT: So who is -- who did he send it to?

7 MR. ANDRES: He is sending it to other people
8 at Devon, and he's --

9 THE COURT: At Devon.

02:59:31 10 MR. ANDRES: And he is recounting in that what
11 he was told out of court by people at Conoco. So there is
12 a hearsay objection.

13 Secondly, and more importantly, it
14 references an estimate of the \$303 million for the -- for
02:59:47 15 the abandonment process.

16 THE COURT: That's what they're claiming.

17 MR. ANDRES: That is what they're saying Conoco
18 is saying. Now, remember, Your Honor, that Devon is not --

19 THE COURT: I thought Conoco was still in this
02:59:59 20 deal somewhere.

21 MR. ANDRES: Yes. But Devon is not asking for
22 a single dollar nor have they paid a single dollar --

23 THE COURT: I thought they were asking for some
24 money.

03:00:08 25 MR. ANDRES: They are asking for attorneys'

1 fees, but they haven't paid anything relating to the
2 decommissioning.

3 THE COURT: So what is the jury going to
4 decide?

03:00:15 5 MR. ANDRES: The jury is going to decide
6 whether they should be indemnified, and the problem with
7 admitting this document is it says \$303 million and
8 Mr. Johnson is 1,000 percent wrong -- 1,000 percent wrong,
9 when he says it matters whether this case is -- that the
03:00:30 10 jury needs to know it is not a case about a dollar, that it
11 is a case about a lot more.

12 This has nothing to do with money. It is
13 entirely -- it is entirely about indemnification.

14 THE COURT: But isn't it always about money?

03:00:43 15 MR. ANDRES: It is ultimately about money but
16 no money has been spent. So to raise those issues to the
17 jury, to tell the jury that this case is about -- that the
18 estimate is \$300 million is highly prejudicial and not
19 relevant at all.

03:00:57 20 THE COURT: Where did he get the \$300 million?

21 MR. ANDRES: He got it from ConocoPhillips.

22 THE COURT: Okay. And you are saying he
23 can't -- as far as this segue, if it comes out in
24 testimony, it shouldn't come out in this document.

03:01:09 25 MR. ANDRES: Exactly. It shouldn't come out in

1 testimony.

2 THE COURT: Why not?

3 MR. ANDRES: Because it will make the jury

4 believe or let them understand that the potential at issue

03:01:17 5 here is relevant to the interpretation of the contract, and
6 it's not.

7 THE COURT: All right. Hold it a second.

8 You are going to try to get that 300
9 million in somehow, right?

03:01:29 10 MR. TABOLSKY: We are certainly going to talk
11 about what the liabilities issues are, and that's right,
12 Devon hasn't paid it yet. We have held off because we're
13 trying to -- here to get them -- indemnification.

14 THE COURT: How do you get the 300 million to
03:01:40 15 the jury?

16 MR. TABOLSKY: You mean besides Mr. Hathcock's
17 testimony if you allow him to testify?

18 THE COURT: Yeah, I am saying that. Do you get
19 it in through him?

03:01:47 20 MR. TABOLSKY: We can get it in through him and
21 also through --

22 THE COURT: Is that his estimate or Conoco's
23 estimate?

24 MR. TABOLSKY: I mean, it's an estimate that a
03:01:54 25 working group came up with together.

1 THE COURT: What working group?

2 MR. JOHNSON: Including him.

3 MR. TABOLSKY: The PX-50, and I have a copy of
4 it here, if you'd like to see it.

03:02:04 5 THE COURT: No, I'm just listening to you.

6 MR. TABOLSKY: So there is a working group of
7 people, and they had a meeting, which involves Devon
8 people --

9 THE COURT: Representing both sides?

03:02:13 10 MR. TABOLSKY: That Devon and Conoco people
11 both were there.

12 THE COURT: Was Conoco in on this?

13 MR. TABOLSKY: ConocoPhillips is --

14 THE COURT: And they're now paying --

03:02:18 15 MR. TABOLSKY: Conoco is paying money. They
16 are the ones dealing with it as the operator; then they are
17 coming back to us.

18 THE COURT: What are they doing?

19 MR. TABOLSKY: Right now, it's primarily
03:02:26 20 maintenance and monitoring. So until they actually start
21 taking the thing down and it's been about, what,
22 \$20-something million today, just on the maintenance and
23 monitoring of the platform until it is taken down.

24 THE COURT: All right. So if you take it down,
03:02:39 25 you are taking it down through that platform? Or someone

1 needs to take it down?

2 MR. TABOLSKY: Someone needs to take the
3 platform down.

03:02:48

4 THE COURT: Through the platform, to deploy
5 what all of the -- all of the pipes coming into it?

6 MR. TABOLSKY: So, two separate things. They
7 have to plug the 70 or so wells in the seabed.

8 THE COURT: Themselves?

03:02:58

9 MR. TABOLSKY: They have to plug the wells
10 themselves.

11 And then, unlike in the Gulf, where we
12 just sink the platforms, there -- in California, we
13 actually have to dismantle it and take it away. So we have
14 to actually take the platforms down themselves.

03:03:09

15 MR. ANDRES: Your Honor, none of which -- and
16 maybe I misheard. None of which goes to the interpretation
17 of the contract, which is the issue in this case.

18 THE COURT: All right. What is it that you
19 object in there? What paragraph?

03:03:19

20 MR. ANDRES: Well, we object to the entire
21 thing because it is hearsay, and I'm not sure that you can
22 just redact it.

23 THE COURT: Well, no. What is -- what exactly
24 is it that you object to? Show me the paragraph --

03:03:30

25 MR. ANDRES: Yep.

1 THE COURT: -- that you say -- I am not -- it
2 is either coming in or going out, okay?

3 MR. ANDRES: Your Honor, if you look at -- you
4 see under where it says, Carpenter to --

03:03:42 5 THE COURT: What page are you on?

6 MR. ANDRES: I'm on Bates number 9533.

7 THE COURT: 9533. That's the very first page.

8 MR. ANDRES: PX-50, yeah.

9 THE COURT: Where is the dollar amount?

03:03:54 10 MR. ANDRES: You see the numbers, one, two,
11 three, four, five, "COP," which is ConocoPhillips,
12 "estimates the total abandonment cost to be \$303 million."

13 THE COURT: Okay. So what about letting that
14 letter in and taking out Number 5?

03:04:12 15 MR. ANDRES: Well, it's not clear that any of
16 the rest of -- or at least, I don't understand why any of
17 the rest of the letter is relevant because it's all talking
18 about what ConocoPhillips is doing, not what Devon is
19 doing, and Devon, by the way, hasn't paid a dime so far.

03:04:28 20 THE COURT: All right.

21 Well, Mr. Tabolsky, do you have any --
22 what is it -- if he -- if you take out paragraph 5, is the
23 rest of it still admissible?

24 MR. TABOLSKY: Yes. But paragraph 5 is an
03:04:47 25 important part of it.

1 MR. ANDRES: The whole part.

2 THE COURT: That is probably the important
3 part.

4 MR. TABOLSKY: But -- and to be clear I wanted
03:04:54 5 to talk about both its importance and why it is being
6 offered for a nonhearsay admissible purpose.

7 THE COURT: What is the purpose?

8 MR. TABOLSKY: Okay.

9 THE COURT: State of mind?

03:05:02 10 MR. TABOLSKY: No.

11 THE COURT: No.

12 MR. TABOLSKY: Because under California law, it
13 has to be -- you have to look at what the purposes and the
14 overall nature of the agreement is.

03:05:10 15 THE COURT: Let me ask you this: When it comes
16 down to the rules of evidence, are we dealing with the
17 federal rules or the California rules, because this is
18 procedural, isn't it?

19 MR. TABOLSKY: It is a mix, Your Honor. So
03:05:18 20 you're right. The rules of evidence are certainly
21 procedural, and thus we look to the federal rules of
22 evidence.

23 THE COURT: Okay.

24 MR. TABOLSKY: But when it comes to contract
03:05:25 25 interpretation and the parole evidence rule and the Fifth

1 Circuit has dealt with this in Texas law many times, the
2 parole evidence rule is a rule of substantive law, even
3 though it kind of -- had the -- affects what is relevant
4 and what isn't relevant, the parole evidence rule is a
5 substantive rule.

03:05:39

6 And California's parole evidence rule says
7 we look at the purpose. And the -- I mean, look, you --

8 THE COURT: Go on.

9 MR. TABOLSKY: You presided over more cases

03:05:52

10 probably than all the rest of us have been involved in
11 combined. The jury needs to know why they are here. We
12 won't say it is just about contract interpretation. It is
13 about breach and --

14 THE COURT: How do you get the money in?

03:06:04

15 MR. TABOLSKY: Pardon?

16 THE COURT: How do you get the money in?

17 Because that's why I went right to that paragraph 5.

18 MR. TABOLSKY: Because the money --

19 THE COURT: Where do you get -- how do you get

03:06:10

20 the money in over an objection if you -- if they are going
21 to make an objection? What's the relevance of that?

22 MR. TABOLSKY: The relevance is two-fold.

23 First, he's got to understand -- I mean, they want to just look
24 at this contract as the -- without any content -- they want

03:06:28

25 to just say, oh, let's go to the contract without any

1 context for what's going on.

2 When you look at the language you have to
3 understand, okay, what is the world they are dealing with
4 and --

03:06:36 5 THE COURT: I understand completely, but what's
6 the case law say in something like that?

7 MR. TABOLSKY: The case law --

8 MR. ANDRES: Your Honor, and just to be clear,
9 the context, it's not -- everybody knows that we're talking
03:06:45 10 about oil platforms in the ocean.

11 THE COURT: I understand that.

12 MR. ANDRES: Everybody talks -- knows that
13 they're in California. That's the context. Everybody
14 knows it happened in 1991 and 1996. The money is not the
03:06:57 15 context. The money is the prejudicial part that is going
16 to cause this jury to think this is about hundreds -- or
17 millions of dollars, and that is not relevant to the
18 interpretation of the contract.

19 THE COURT: Why not? No, no. Why isn't it
03:07:12 20 relevant, as Mr. Tabolsky said so, they know the scope of
21 what they are dealing with?

22 MR. ANDRES: Because the scope of what they're
23 dealing with is the -- what the contract means. That's
24 what this case is about.

03:07:23 25 THE COURT: I have got it.

1 MR. ANDRES: That is why.

2 THE COURT: You are going to need -- I don't
3 want an appellate brief. I'm not doing appellate work. I
4 need something on that where you can get it in or keep it
5 out.

03:07:34

6 MR. ANDRES: Understood, Your Honor.

7 MR. TABOLSKY: All right.

8 THE COURT: Okay. I don't need an appellate,
9 but I want something on that point.

03:07:41

10 MR. TABOLSKY: Okay.

11 MR. ANDRES: Thank you, Your Honor.

12 THE COURT: Now, but I will rule on the
13 objection to that document. Okay?

14 MR. ANDRES: Sure.

03:07:50

15 THE COURT: So, basically, your position is
16 that he's just stating what his conference with Conoco was,
17 right?

18 MR. ANDRES: For the 300 million.

19 THE COURT: Well, and your position is you need
20 it in basically for what reason?

03:08:01

21 MR. TABOLSKY: First, the reason I have already
22 stated -- already stated, and also, Mr. Hathcock is also
23 designated as a nonretained expert witness, and this is
24 also a document upon which he relies for opinions he will
25 give. He has spent 40 years dealing with the

03:08:16

1 decommissioning of platforms. That's his job. That's what
2 he does.

3 THE COURT: Well, so what would it do, be
4 admissible for a limited purpose?

03:08:25 5 MR. TABOLSKY: Correct, Your Honor.

6 THE COURT: You know you see where I am going.
7 Again, I don't know if I am going to get there, but if
8 it's -- as an expert, does he rely upon such matters, and
9 then, if so, does it come in?

03:08:40 10 MR. ANDRES: Your Honor, this is --

11 THE COURT: Hold it. And then if it comes in,
12 do we excise that 500 million because that is a document
13 that he relied on, and just knocked out this one black area
14 on that one anyhow already?

03:08:55 15 MR. ANDRES: Your Honor, I am confused about
16 how he is relying on a document in which all he's doing is
17 telling his colleagues what he heard. In other words, he
18 knows that information. He heard it. How is that
19 something that he doesn't have within his experience? Like
03:09:10 20 writing this e-mail doesn't help him in his analysis. He
21 knows the information, he is just telling other people, and
22 I think that Devon's counsel said pretty clearly the 300
23 million is the -- is the big enchilada here. That is why
24 they want this document in.

03:09:25 25 THE COURT: Well, there's a number of ways to

1 do it depending upon what I decide upon, telling the jury
2 at all concerning the 500 million. I understand both
3 sides. One wants it in, one doesn't want it in. I also
4 understand the reasons, but then, again, if it's a document
03:09:42 5 he relied upon, and if I say in the whole case you can't
6 get that 300 million in, I may just say excise that, and is
7 that a document you relied upon?

8 Because at that point it could be
9 admissible for that limited purpose, that it was some
03:10:00 10 reason that he relied on it. I don't know where I am going
11 on that, that money business. That's the first time here
12 that we have discussed today, I would like a little more
13 guidance on it, but I understand that real clear.

14 So I am going to rule on it, all right? I
03:10:16 15 am going to rule on it. But, again, defense -- and if I
16 keep it out, then the question is: Does it come in for a
17 limited purpose knocking out that 500 or 300 or letting it
18 in?

19 All right. I got a handle on it and
03:10:32 20 that's the key thing that I want when I start ruling, or I
21 may hold off on that until I get a little bit of briefing,
22 and just do a motion in limine. You are not to go into
23 that amount until I have had a chance to look at, you know,
24 that -- what is it, that is -- okay?

03:10:53 25 MR. ANDRES: Your Honor, now that we have a

1 handle on that issue, the next exhibit sort of is the same
2 thing.

3 THE COURT: That's the, what, ConocoPhillips --
4 yeah, now is costs --

03:11:02 5 MR. ANDRES: 114. So this is similar in the
6 sense that this is relating to a spend at Signal Hill.
7 Again, this document doesn't relate to -- it confirms the
8 money that ConocoPhillips spends. I think Devon would
9 concede.

03:11:15 10 THE COURT: Okay. Which number is that? 114?

11 MR. ANDRES: Yeah.

12 THE COURT: Let me pull that.

13 MR. ANDRES: I think the amount at issue here
14 is 22 million, and that is how much has been spent so far.

03:11:25 15 So without belaboring the point, this issue really is
16 exactly the same. Obviously this isn't for Mr. Hathcock,
17 so I'm not sure --

18 THE COURT: Hang on a second. 114 is what?
19 One page?

03:11:38 20 MR. ANDRES: Yeah.

21 THE COURT: All right. Let me read it.

22 Now, Rover is who? Someone at ConocoPhillips?

23 MR. ANDRES: Right. So this is ConocoPhillips
24 saying --

03:12:03 25 THE COURT: To who?

1 MR. ANDRES: It's ConocoPhillips to Mark
2 McDaniel at Devon.

3 THE COURT: Devon.

4 MR. ANDRES: Somebody from Maersk. I am not
03:12:12 5 sure I know who all these people are, Your Honor, but I'll
6 certainly find out. You see it says, Signal Hill Services
7 Lease, this is our lease, spent to date, please allow this
8 to confirm that the current spend by ConocoPhillips is
9 \$22.4 million. Again, nothing to do with Devon. Not
03:12:28 10 relevant to the -- what the contract means.

11 THE COURT: Who do you want to try to get this
12 in through, Mr. Tabolsky, or whoever has got it? Who do
13 you want to get this in through?

14 MR. TABOLSKY: So this is an adopted business
03:12:40 15 record of -- of Devon. We served the business records
16 affidavit of Mark McDaniel, and under Fifth Circuit law, in
17 particular *United States v. Duncan*, 919 F.2d 981, and
18 then --

19 THE COURT: That is an old case. What is the
03:12:56 20 number on it? What's the year?

21 MR. TABOLSKY: It's a 1990 case.

22 THE COURT: Okay. Go on.

23 MR. TABOLSKY: And then going to 2021 case from
24 the Fifth Circuit, *Willbern v. Bayview Loan Servicing*, 842
03:13:07 25 Federal Appendix 865, which relies on *Duncan*, a business

1 record can be a third-party document that a company
2 incorporates into its own records.

3 Mr. McDaniel in his declaration states
4 that this exhibit, among others, are ones that Devon relies
03:13:20 5 upon in its overall dealing with this project.

6 THE COURT: All right. That doesn't mean it's
7 admissible into evidence, it's that it can be identified as
8 a business record. Then you also look at the contents of
9 it.

03:13:34 10 MR. TABOLSKY: Here, the business record -- the
11 document is the statement.

12 THE COURT: Say again?

13 MR. TABOLSKY: There is not a double hearsay
14 issue here, Judge.

03:13:40 15 THE COURT: What is it? Tell me what that is.
16 Tell me what -- explain that.

17 MR. TABOLSKY: The double hearsay would be if
18 in Mr. Rother's e-mail he said, Bob told -- he said in an
19 e-mail: By the way, I talked to Bob. Bob told me X. That
03:13:55 20 would be a double hearsay issue. Here, PX-114 is
21 Mr. Rother saying, COP -- the current spend by COP through
22 January 2023 is 22.4 million.

23 THE COURT: Hold it.

24 MR. TABOLSKY: There is no double hearsay here.

03:14:10 25 MR. ANDRES: It's a relevance issue, Your

1 Honor. It's relevance and prejudice.

2 THE COURT: Hang on a second. This is from
3 Conoco, all right, to Devon, correct?

4 MR. ANDRES: To Devon and others.

03:14:23 5 MR. TABOLSKY: And Chevron.

6 THE COURT: Pardon me?

7 MR. TABOLSKY: And Chevron.

8 THE COURT: Okay. And Chevron. All right.

9 Now, why do you need this in here?

03:14:42 10 MR. TABOLSKY: We need this in because -- let's
11 be clear about something.

12 THE COURT: Yes, that would help.

13 (Laughter.)

14 MR. TABOLSKY: This is something that Conoco is
03:14:52 15 saying we have to pay. We have held off paying this
16 22 million until we get this indemnification issue sorted
17 out. Again, it's what we're here about and it is why the
18 jury is going to spend time in the box.

19 I know Mr. Andres wants this to be a
03:15:06 20 summary judgment hearing, when they look at the contract
21 and nothing else, but we have all done contract cases, and
22 we talk about what's at issue, what the facts are, what --
23 what is indemnity being sought for?

24 And in this case with a declaratory
03:15:18 25 judgment claim, what are we seeking to have the Court

1 declare we are entitled to be indemnified for.

2 MR. ANDRES: Your Honor, that is -- it is both
3 disingenuous and circulus. What they want is the money.

4 They said it. They want the 22 million. We are all going

03:15:36 5 to talk about the platforms. That's what they're asking to

6 be -- they don't need the \$22 million. They didn't spend

7 the \$22 million. It is prejudicial to be putting these

8 millions of dollars in front of the jury to suggest that

9 there are millions of dollars at issue. They don't need

03:15:51 10 the money, and we're happy to brief that. By the way --

11 THE COURT: Well, that's what I asked for.

12 MR. ANDRES: Yeah. By the way, this -- this

13 declaration of Mr. McDaniel who is a -- who is a lawyer at

14 Devon, we don't have to talk about this now, and maybe

03:16:05 15 Devon should just re-review this, but their concept of what

16 constitutes a business record I think is flawed.

17 I mean, they include in here as business

18 records that Mr. McDaniel, a lawyer who signed under

19 penalty of perjury, a document that they got from Chevron

03:16:22 20 in discovery. So I don't know how they take discovery in

21 this case and then all of a sudden it becomes a business

22 record in their case.

23 It's sort of -- it's sort of -- but I --

24 you know, they certainly can re-review that. I am happy to

03:16:37 25 move on to the next exhibit, Your Honor.

1 MR. TABOLSKY: I would like to respond to that
2 point.

3 THE COURT: Go right ahead.

4 MR. TABOLSKY: The document he referred to,
03:16:43 5 yes, we used the one with Chevron's --

6 THE COURT: Slow down, please.

7 MR. TABOLSKY: We used the one with Chevron's
8 Bates number on it, but it's an e-mail that Mr. McDaniel
9 himself is copied on. And he lays out in his declaration,
03:16:53 10 what is it -- no, that's a different exhibit than the one
11 we're talking about right now.

12 The only thing disingenuous here is
13 Mr. Andres's argument that somehow this all -- this case
14 isn't about money. Of course it is about money. It's
03:17:05 15 about the parties' rights under a contract.

16 MR. ANDRES: Then why aren't they asking the
17 jury for any money? Why aren't they asking the jury for
18 money? They are not. They are not asking the jury for
19 money and somehow this is a case about money.

03:17:17 20 MR. TABOLSKY: Because in PX-43, your client
21 refused to step to the plate and honor its obligations.
22 It's the reason we're here. And we have held off spending
23 the money until we get the jury and this Court to rule on
24 who owes what.

03:17:31 25 They're faulting us for trying to hold the

1 line rather than just going out and spending money now,
2 where I am sure they would be complaining we should have
3 done something different with how we spend it. That's why
4 declar- --

03:17:41

5 MR. ANDRES: Your Honor, nobody is --

6 THE COURT: I'm listening.

7 MR. TABOLSKY: That is why declaratory
8 judgments exist. That's what we are here about.

03:17:49

9 MR. ANDRES: Nobody is suggesting it's not
10 about money, Your Honor. It's about the amount of money
11 that's the improper and prejudicial, and we will brief
12 that. So I am happy to move on.

13 THE COURT: All right. All right. The next
14 one, we have --

03:18:02

15 MR. ANDRES: 109.

16 THE COURT: -- 109. You can take a look
17 at 109.

18 MR. ANDRES: Might be at the end, Your Honor.

03:18:24

19 THE COURT: They were redacted at the top,
20 right?

21 MR. ANDRES: We are going to ask for a legal
22 instruction about that later, Your Honor.

23 So just very briefly and so we have the
24 same page, 5912 is the Bates number.

03:18:32

25 THE COURT: That is correct, 592.

1 MR. ANDRES: So this is a document in which
2 ConocoPhillips, Chevron, Devon, and others -- Devon --
3 ConocoPhillips, Devon and others are asking Chevron to join
4 a joint defense group relating to the decommissioning of
03:18:50 5 the Hogan and Houchin platforms.

6 We object as not relevant, prejudicial. I
7 don't think anybody with personal knowledge will
8 necessarily testify about this. And it is hearsay.

9 So just to start with the prejudicial
03:19:05 10 issue, the notion that --

11 THE COURT: Now, who is this from? Jason
12 Rother? Rother?

13 MR. ANDRES: Yeah, this is ConocoPhillips at
14 the top. This is the same -- this is a similar group to
03:19:20 15 the prior e-mail, and the point of it is to ask --

16 THE COURT: What is this?

17 MR. ANDRES: The point is to ask if Chevron
18 will join a joint defense group on these issues.

19 THE COURT: Now, who is sending this?

03:19:32 20 MR. ANDRES: ConocoPhillips is sending it.

21 THE COURT: ConocoPhillips?

22 MR. ANDRES: Correct.

23 THE COURT: And they are asking you?

24 MR. ANDRES: They are basically saying, look,
03:19:42 25 we have this issue with BSEE and we -- and BSEE may think

1 that you have obligations, you, Chevron, and you should
2 join this joint defense group.

3 So this document is being put in for the
4 impermissible purpose of showing that either ConocoPhillips
03:19:57 5 or the federal government believed that Chevron had
6 liability here, and that's -- that is not the issue here,
7 and it's prejudicial to be bringing in --

8 THE COURT: What do you need this for? What do
9 you need this for?

03:20:11 10 MR. YEGPARIAN: The bottom e-mail.

11 THE COURT: Pardon me?

12 MR. YEGPARIAN: Sorry, Your Honor. The bottom
13 e-mail in the thread, it's from Chevron --

14 THE COURT: Hold it a second. I need something
03:20:24 15 like this. You think I am kidding.

16 MR. YEGPARIAN: I need it, too.

17 THE COURT: Can't read the darn thing.

18 MR. YEGPARIAN: The bottom of the thread is an
19 e-mail from Chevron's attorney.

03:20:37 20 THE COURT: That guy Jason.

21 MR. YEGPARIAN: No, Your Honor, Benjamin Sweet.

22 THE COURT: Where is that?

23 MR. YEGPARIAN: At the very bottom on --

24 THE COURT: Oh, yeah. From Sweet.

03:20:45 25 Who is he?

1 MR. YEGPARIAN: He is one of Chevron's
2 attorneys.

3 THE COURT: Chevron's attorneys.

4 MR. YEGPARIAN: Yes, Your Honor.

03:20:50 5 THE COURT: Who is he sending it to?

6 MR. YEGPARIAN: He is sending it to Jason
7 Rother.

8 THE COURT: Who is he?

9 MR. YEGPARIAN: He is a gentleman with
03:20:55 10 Conoco --

11 THE COURT: -- Phillips?

12 MR. YEGPARIAN: Yes, Your Honor.

13 THE COURT: Go on.

14 MR. YEGPARIAN: So, a statement by party
03:21:00 15 opponent, by Chevron's attorneys and in that e-mail he is
16 characterizing the decommissioning liability as a
17 regulatory liability.

18 The entire issue -- according to
19 Mr. Andres, this is about the contract. It is about the
03:21:12 20 contract and what the contract covers. The contract covers
21 regulatory liabilities and Chevron's attorney is saying,
22 this is a regulatory liability.

23 THE COURT: I don't understand that. Break it
24 down.

03:21:26 25 MR. YEGPARIAN: Sure. Mr. Sweet, in this

1 e-mail, is characterizing decommissioning as a regulatory
2 liability.

3 THE COURT: Again, state who he is with.

4 MR. YEGPARIAN: Chevron. So it's a statement
03:21:36 5 by party opponent. Chevron is characterizing the liability
6 in this case as regulatory. Chevron has agreed to
7 indemnify Devon from regulatory liabilities.

8 THE COURT: You are talking about contractual
9 liability --

03:21:52 10 MR. YEGPARIAN: Yes, Your Honor.

11 THE COURT: -- versus regulatory liability?

12 MR. YEGPARIAN: No. No. No.

13 THE COURT: I am not following.

14 MR. YEGPARIAN: Yes. The indemnity covers
03:22:02 15 regulatory liabilities --

16 THE COURT: Okay.

17 MR. YEGPARIAN: -- according to Chevron. Here,
18 Chevron is saying, we are not responsible under the
19 regulations for decommissioning. Therefore, according to
03:22:17 20 Chevron, decommissioning is a regulatory liability for
21 which they have agreed to indemnify us.

22 THE COURT: How are you going to explain that
23 to a jury if I have problems --

24 MR. YEGPARIAN: Very carefully.

03:22:31 25 MR. ANDRES: And they are trying to match up a

1 statement in 2020 to a contract in 1996. So that -- the
2 lack of connection or the ability to do that will render
3 this document completely irrelevant and prejudicial.

03:22:49 4 MR. YEGPARIAN: So -- documents that are -- I
5 apologize, Your Honor.

6 THE COURT: No, go on.

7 MR. YEGPARIAN: There is a fundamental
8 confusion I'm hearing from Chevron as to what prejudice is
9 versus what's unfairly prejudicial.

03:22:59 10 THE COURT: They are hearing from me what
11 confusion is. Go on.

12 MR. YEGPARIAN: Fair enough.

13 That there are admissions by Chevron in
14 Chevron's documents that we --

03:23:08 15 THE COURT: That what?

16 MR. YEGPARIAN: That we intend to use to
17 impeach their witnesses and show that they owe the
18 indemnity does not make those documents unfair. Every
19 document that is bad for Chevron is necessarily
03:23:27 20 prejudicial. We're not -- the standard is not is it a bad
21 document for Chevron; it's is it unfair?

22 THE COURT: So what's about this one we're
23 looking at?

24 MR. YEGPARIAN: It is not unfair. It's a bad
03:23:39 25 document from Chevron, but that's doesn't mean it is

1 excluded.

2 THE COURT: How you going to blow this up on
3 the screen?

4 MR. YEGPARIAN: We will work on it, Your Honor.

03:23:46 5 MR. ANDRES: Your Honor, they are asking about
6 a joint defense group. We are going to sit here and
7 explain to the jury what a joint defense group is? I mean,
8 it's so far afield. And frankly, I am sure Your Honor
9 doesn't need a lecture on prejudice and we don't either.

03:24:01 10 This document, they're not pointing you to
11 the part that is prejudicial in terms -- notwithstanding
12 the bottom is as well, but they're talking about a joint
13 defense agreement. Who is going to explain that to the
14 jury?

03:24:12 15 THE COURT: Hang on one second.

16 MR. ANDRES: One of their legal expert lawyers
17 are going to get up there and discuss joint defense
18 agreements? I mean, if --

19 MR. YEGPARIAN: Your Honor --

03:24:21 20 THE COURT: Yes, sir.

21 MR. YEGPARIAN: -- no part of what I just went
22 through broaches on a joint defense group. That is not
23 what we intend to use the document for.

24 THE COURT: What are you going to use it for?

03:24:29 25 MR. YEGPARIAN: To show that Chevron considers

1 decommissioning to be a regulatory liability per Chevron's
2 attorneys' own words.

3 THE COURT: Rather than?

4 MR. YEGPARIAN: Rather than whatever -- I am
03:24:39 5 unclear on that. That's been a bit of a moving target.

6 THE COURT: Where did they say that in here? I
7 mean, where does it say that?

8 MR. YEGPARIAN: He says --

9 THE COURT: Where? At the bottom one?

03:24:52 10 MR. YEGPARIAN: Yes, Your Honor. Give me one
11 second. Where he says "Chevron is not responsible under
12 the regulations."

13 THE COURT: Where? Where? In other words, I
14 am looking at it -- I want to highlight it. I don't even
03:25:05 15 see it.

16 MR. YEGPARIAN: Yes, Your Honor. There is a
17 sentence about midway through that e-mail that says --

18 THE COURT: From Jason?

19 MR. YEGPARIAN: No, Your Honor, from Benjamin
03:25:14 20 Sweet. The very bottom that begins with as "Chevron
21 communicated to BSEE" --

22 THE COURT: Okay.

23 MR. YEGPARIAN: -- which is the regulatory
24 agency.

03:25:22 25 In it's December 2nd, 2019 letter, Chevron

1 has never been record title owner of OCS Lease P-1066, and
2 therefore, is not liable under the regulations for any
3 lease decommissioning costs.

03:25:41 4 THE COURT: Okay. Now, that's what -- I have
5 it now highlighted. All right. Now -- so what do you say
6 is right or wrong about that?

7 MR. YEGPARIAN: We say that their
8 characterization of decommissioning as a regulatory
9 liability is correct, and that is why they owe us
03:25:55 10 indemnity.

11 THE COURT: All right. I understand that
12 point.

13 MR. ANDRES: Your Honor, that is the first part
14 we're hearing about which part of that exhibit they are
03:26:03 15 going to use, so if we could get a minute to just think
16 about that, too. If we file a submission --

17 THE COURT: Oh, yeah. Think about it.

18 MR. ANDRES: We have time -- I don't think
19 that's coming in.

03:26:09 20 THE COURT: How much time do you need to think
21 about it?

22 MR. ANDRES: Well, just the first time we have
23 heard they are going to use that passage for that reason,
24 and that is something I want to consider before we respond.
03:26:18 25 But, again, we still think the document is not admissible,

1 and that it is irrelevant, but I don't want to address that
2 point without having the opportunity --

3 THE COURT: When else are we going to do it?
4 We are going to trial.

03:26:32 5 MR. ANDRES: I understand, but that is not
6 being admitted the first day of trial and so to the extent
7 that we have other arguments --

8 THE COURT: No, I am going to rule on it. What
9 do you want me to rule on it?

03:26:39 10 MR. ANDRES: I want you to rule that it is not
11 admissible at least on the point I mentioned relating to
12 the joint defense group and because that statement in
13 2020 --

14 THE COURT: Hang on. Where does it say "joint
03:26:49 15 defense group"? Where?

16 MR. ANDRES: I am looking, Your Honor.

17 THE COURT: You want the magnifying glass?

18 MR. ANDRES: I may need it, Your Honor.

19 MR. YEGPARIAN: Your Honor, we are happy to
03:27:04 20 redact the first e-mail and just include Mr. Sweet's e-mail
21 at the bottom, if that will address this.

22 MR. ANDRES: So that addresses that part, but
23 Mr. Sweet's statement at the bottom, they are going to have
24 to connect from 2020 back to the contract in 1997, and I
03:27:20 25 don't think there is a witness that is going to do that.

1 THE COURT: First of all, you say you agree to
2 redact what?

3 MR. YEGPARIAN: The e-mail from Mr. Rother.

4 THE COURT: Hang on.

03:27:36 5 From Rother, that's the whole top?

6 MR. YEGPARIAN: Yes, Your Honor.

7 THE COURT: So, in other words, you would knock
8 out that redacted all the way down to where?

9 MR. YEGPARIAN: To the second straight line
03:27:54 10 underneath which you see a "from Sweet" --

11 THE COURT: "From Sweet, Benjamin"?

12 MR. YEGPARIAN: Yes, Your Honor.

13 THE COURT: All right. Then I am going to
14 determine that the first part is withdrawn, and I am
03:28:03 15 looking strictly at the last part. Okay?

16 MR. ANDRES: Fair enough.

17 THE COURT: So when you redo the book, okay,
18 and just do a redacted at the top or just begin at the
19 bottom.

03:28:15 20 MR. YEGPARIAN: Absolutely.

21 THE COURT: So now I am going to -- you are
22 requesting for me to rule on that matter at the bottom of,
23 what is it, 592 over to page 593 where it ends, correct?

24 MR. ANDRES: Correct.

03:28:35 25 THE COURT: All right. Let's see.

1 MR. ANDRES: Last group, Your Honor, and I have
2 a small issue.

3 THE COURT: Okay. Hang on a second.

4 MR. ANDRES: Yep.

03:29:01 5 THE COURT: So Plaintiff's Exhibit 109?

6 MR. YEGPARIAN: Yes, Your Honor.

7 THE COURT: Partially redacted, right?

8 MR. YEGPARIAN: Yes, Your Honor.

9 MR. ANDRES: Yes.

03:29:07 10 THE COURT: As -- as partially redacted. That
11 is what I am ruling on. No joint defense agreement, but I
12 am going to say "See highlighted area," correct?

13 MR. ANDRES: Yes.

14 THE COURT: Okay. The next one we have now, we
03:29:42 15 are looking at Exhibits 97, 98 and 99.

16 MR. ANDRES: Correct, Your Honor. These are
17 Chevron's 10-Ks for the years 2000 --

18 THE COURT: Hold it. I got to get that back.

19 MR. ANDRES: Yes, they're large. They're more
03:29:58 20 than 100 pages each.

21 THE COURT: Oh, that's great. 97. That is 98,
22 correct?

23 MR. ANDRES: 97, 98 and 99.

24 THE COURT: Starting on Bates number -- there
03:30:24 25 is no Bates number on these.

1 MR. ANDRES: These are the plaintiff's
2 exhibits. It says that -- in the beginning it says one of
3 63. See at the bottom under PX-97?

4 THE COURT: Yeah, one of 63.

03:30:39 5 MR. ANDRES: Yeah. I don't know why these --

6 THE COURT: Well, that is 97, right?

7 MR. ANDRES: Yep.

8 THE COURT: All right.

9 MR. ANDRES: So, Your Honor --

03:30:45 10 THE COURT: Now, what are these?

11 MR. ANDRES: These are Chevron's 10-Ks for the
12 years --

13 THE COURT: Government filings?

14 MR. ANDRES: Yes, with the SEC. And they --

03:30:56 15 they involve the years 2020, 2021 --

16 THE COURT: What are 10-Ks? I am familiar with
17 it. I have done securities work, but what are 10-Ks?

18 MR. ANDRES: It's -- they are filing documents
19 that companies do with the SEC that handle everything from

03:31:09 20 their legal risks to their lawsuits, to their risk factors,
21 to their business model. These documents cover production
22 from everywhere from Argentina, to Suriname, to Africa and
23 beyond. It's a wide-ranging document that covers any

24 number of different issues. There are hundreds -- each of
03:31:28 25 them are more than 100 pages.

1 THE COURT: So how does it hurt you?

2 MR. ANDRES: Well, it hurts us because it goes
3 into establish the wealth and profits of Chevron, which the
4 parties have agreed not to go into. It talks about energy
03:31:42 5 projects all over the world that are of no relevance
6 whatsoever.

7 Moreover, these documents are between 25
8 and 30 years after the contracts that are at issue. This
9 case is about contracts in 1991 and 1996.

03:32:00 10 THE COURT: Well, there is no money damages
11 they're asking for, and there is no punitives where
12 sometimes you go into the worth of a company, correct?

13 MR. ANDRES: Exactly. So they shouldn't be
14 admitted.

03:32:10 15 THE COURT: All right. Why do you need --

16 MR. ANDRES: That's -- you've made my argument
17 better than I could, Your Honor. Thank you.

18 THE COURT: Why should they be admitted?

19 MR. YEGPARIAN: We plan on using these for
03:32:18 20 impeachment with some witnesses.

21 THE COURT: Well, then you can hold them until
22 that time, right?

23 MR. YEGPARIAN: So let's -- that would be our
24 suggestion right now.

03:32:24 25 THE COURT: I'll make -- put a note down for

1 impeachment purposes only, and if it turns relevant, I will
2 reconsider it.

3 That is 90, okay?

4 MR. ANDRES: So, Your Honor, I -- I said that
03:32:36 5 was the last issue. Let me just say that was the last
6 significant issue. I have a very small issue --

7 THE COURT: Okay. Hang on. Let me make my
8 notes.

9 MR. ANDRES: Small issue.

03:33:16 10 THE COURT: Yes, sir. What else you got?

11 MR. ANDRES: Exhibit 16 just very quickly, Your
12 Honor.

13 THE COURT: Where is 16?

14 MR. ANDRES: It might be at the end because we
03:33:27 15 added it at the end. Do you see it there? If not, I can
16 hand it up.

17 THE COURT: Is it in there?

18 THE LAW CLERK: Yes.

19 MR. ANDRES: Is it in order?

03:33:43 20 THE COURT: Here it is. All right. It's in
21 there. Let me look at it. First page got nothing on it.

22 MR. ANDRES: Exactly. If you turn to the
23 second page, Your Honor, so these are -- these, as I
24 understand them, are Graham Whaling's notes, who is a
03:34:05 25 potential witness.

1 THE COURT: Let me at least make a note of
2 this, what we're doing next.

3 Oh, here it is. Okay.

4 Now, this is what? Plaintiff's -- this
03:34:19 5 is --

6 MR. ANDRES: Plaintiff's 16. So on this --

7 THE COURT: Okay. And on Plaintiff's 16, I
8 just want to get it in sequence here.

9 All right. What are they? These are
03:34:37 10 notes, right?

11 MR. ANDRES: These are notes of a potential
12 witness, Mr. Whaling, who you heard from his counsel
13 earlier, he is going to go 10:30 on Friday.

14 THE COURT: Okay. Hang on.

03:34:45 15 MR. ANDRES: We're asking for the very limited
16 relief. On the second page in blue writing it says: Davis
17 Polk, Bill Rosoff and his telephone number, and we think
18 that information should be redacted.

19 THE COURT: Why is that? Who is that?

03:34:58 20 MR. ANDRES: Mr. Rosoff, I -- used to be a
21 partner at Davis Polk. I think I have only met him once 30
22 years ago when I was a summer associate. I met him. He
23 was at the firm for some time. He is not there anymore.
24 It is not relevant to any of this. Davis Polk was

03:35:14 25 representing Texon in this -- in --

1 THE COURT: You want to agree to redact that?

2 MR. YEGPARIAN: Your Honor, we think it is
3 really probative.

4 THE COURT: On what?

03:35:22 5 MR. YEGPARIAN: That Mr. Whaling is discussing
6 a transaction and talking to attorneys, that that -- there
7 is references in there that we intend on using --

8 THE COURT: Who made those notes?

9 MR. ANDRES: Mr. Whaling did.

03:35:37 10 MR. JOHNSON: Mr. Whaling himself. And he is
11 talking to lawyers who represent Texaco, who is merging
12 with a company of which he is a CEO. That was part of the
13 due diligence. That was part of the process, and it is
14 important to get him to explain that.

03:35:48 15 MR. ANDRES: They can talk about lawyers, but
16 inserting Davis Polk, when they're representing Chevron,
17 can have no purpose. There is no relevance that Davis Polk
18 was the law firm. It suggests that, again, we're somehow
19 witnesses to relevant facts here. They can ask about

03:36:02 20 whatever witnesses they want to or any lawyers they want
21 to, but -- aside from the fact that I don't understand the
22 relevance of that nor have they really established that,
23 but the idea that it has anything to do with Davis Polk
24 is -- this is the second time that Devon is trying to

03:36:17 25 somehow insert Davis Polk as witnesses in this case, and I

1 just don't understand it.

2 MR. JOHNSON: I mean, I am not following the

3 thread of how it is not related to Davis Polk when

4 Mr. Whaling wrote "Davis Polk" on the document. That is

03:36:29 5 who he was dealing with. He was dealing with a high

6 powered, international firm who represented Texaco, who is

7 performing due diligence when it bought Monterey and was

8 aware of this indemnity. Redacting it -- let me finish.

9 Redacting it also eliminates he took a

03:36:46 10 note because he thought it was important enough to take a

11 note.

12 MR. ANDRES: To put his phone number, maybe to

13 call him back. I don't think they know.

14 MR. JOHNSON: Exactly. Exactly.

03:36:56 15 MR. ANDRES: But what's the difference if he

16 says I hired a high-powered law firm -- thank you.

17 Appreciate the compliment, frankly. But on top of that,

18 the fact that it is Davis Polk has no relevance, zero. No

19 more or less than it was another large law firm. It's the

03:37:11 20 name that's prejudicial. It suggests that we somehow have

21 inside information or are witnesses to these things.

22 Mr. Rosoff hasn't been at Davis Polk for

23 years. It's honestly silly.

24 MR. JOHNSON: Mr. Whaling didn't hire Davis

03:37:24 25 Polk. Texaco did, the predecessor to Chevron. That's who

1 he is interacting with.

2 THE COURT: Okay. I got it. I will rule on
3 it.

4 MR. ANDRES: Thank you, Your Honor. And then I
03:37:32 5 promise the last thing.

6 THE COURT: More?

7 MR. ANDRES: We have a new exhibit that we have
8 asked to add to our list.

9 THE COURT: Oh, a new exhibit.

03:37:38 10 MR. ANDRES: Just one. It's a regulation we
11 provided Devon. It relates to --

12 THE COURT: What number is it?

13 MR. ANDRES: It is going to be DX-37. It's a
14 provision of the CFR. I am happy to wait until it comes up
03:37:53 15 at trial but --

16 THE COURT: Any objection to that?

17 MR. YEGPARIAN: Your Honor --

18 MR. ANDRES: Devon -- excuse me. Devon clearly
19 also has regulations listed as exhibits in their case, and
03:38:02 20 I don't know. So...

21 MR. YEGPARIAN: I am a little confused.

22 THE COURT: Why? You're confused?

23 MR. YEGPARIAN: I'm confused now because we --

24 THE COURT: Why is he --

03:38:10 25 MR. YEGPARIAN: -- we endeavored fulsomely --

1 THE COURT: Say that again.

2 MR. YEGPARIAN: We endeavored fulsomely --

3 THE COURT: Fulsomely?

4 MR. YEGPARIAN: Fulsomely.

03:38:18 5 THE COURT: What's that mean?

6 MR. YEGPARIAN: I'm not -- with a lot of

7 fulsome.

8 THE COURT: Okay.

9 (Laughter.)

03:38:25 10 MR. YEGPARIAN: When we filed the pretrial
11 order, we -- that was what we are going to try -- let me
12 try that again.

13 When we filed the pretrial order that was
14 our exhibits. It was both parties' exhibits.

03:38:40 15 THE COURT: Okay.

16 MR. YEGPARIAN: Now, three months later, we're
17 removing exhibits that Chevron offered themselves and now
18 we're adding exhibits, and it's apparently going to be a
19 regular -- a regulation. And this morning, we were talking
03:38:53 20 about lawyers getting up and talking about the law, and so
21 I'm just very confused.

22 Are we just ignoring what our exhibits
23 were, when we filed the pretrial order? Are we letting
24 lawyers get up and testify to the law? I don't understand.

03:39:09 25 MR. ANDRES: I am happy to fill in the five

1 lawyers or four lawyers that are here for Devon. I think
2 together they can handle one new exhibit, which has been
3 referenced in the expert opinions and is part of this case.
4 So, clearly, they can't claim -- well, at this point, I
5 suppose they could claim --

03:39:27

6 THE COURT: What does it look like?

7 MR. ANDRES: It's a one-page -- part of the
8 CFR.

9 THE COURT: Give it to them.

03:39:32

10 MR. ANDRES: I did.

11 THE COURT: Did you get a copy of it?

12 MR. YEGPARIAN: They e-mailed a copy.

13 MR. ANDRES: Do you not have a copy if the --

14 MR. YEGPARIAN: Not on me right now.

03:39:40

15 MR. ANDRES: Thank you. You have not reviewed
16 that at all during the course of this case?

17 THE COURT: What's that?

18 MR. YEGPARIAN: Sorry, Your Honor?

19 THE COURT: Okay. Hold on. I know. I am

03:39:47

20 looking at the court reporter. I know, huh. By the way,
21 if everybody is talking, including the judge, who do you
22 take down?

23 THE COURT REPORTER: The Judge.

24 (Laughter.)

03:39:57

25 THE COURT: All right.

1 Now, have you got a copy of it?

2 MR. YEGPARIAN: Yes, Your Honor. We --

3 THE COURT: Does it hurt you? You don't know?

4 MR. YEGPARIAN: Not as I stand here right now.

03:40:06 5 I am -- my point is, we need -- this has become a bit of a
6 trial by ambush where Chevron --

7 THE COURT: Oh, you don't think I realize that?

8 MR. YEGPARIAN: No, I'm well -- I'm just
9 emphasizing what the Court already knows.

03:40:25 10 THE COURT: I am watching ambushes on both
11 sides. Go on.

12 MR. ANDRES: I would like to understand what
13 the ambush is.

14 THE COURT: What is the ambush?

03:40:33 15 MR. ANDRES: We've objected to one document --

16 THE COURT: Hold it. Hold it.

17 MR. ANDRES: -- which is not admissible under
18 the federal rules of evidence.

19 Could I just finish, Your Honor? We
03:40:38 20 have withdrawn one document which is not admissible
21 pursuant to the Federal Rules of Evidence.

22 THE COURT: One or two documents?

23 MR. ANDRES: Just one.

24 MR. YEGPARIAN: Two.

03:40:46 25 THE COURT: Go on.

1 MR. ANDRES: And we have added another, which
2 is a regulation, which I think counsel will tell you he's
3 been familiar with at least for the years during the
4 pendency of this -- of this --

03:40:56 5 THE COURT: What does it look like? You got a
6 copy?

7 MR. ANDRES: Yeah. I would just like to
8 hear -- if he is hearing about this for the first time,
9 like he has never seen the regulation, it's been part of
03:41:06 10 this case for years, and they feign that somehow this is
11 some huge burden because there is a new document that they
12 are aware of, and that they have seen, and I'll look for a
13 copy.

14 MR. YEGPARIAN: There's a -- that regulation is
03:41:24 15 referenced in an exhibit that we're offering. It's a
16 notice to lessee. We can get the number. We will let this
17 come in as long as Chevron removes their objections to that
18 exhibit.

19 MR. ANDRES: I have to take a look at that
03:41:36 20 exhibit. I mean, we are asking for -- if it is the same --

21 THE COURT: Hold it.

22 MR. ANDRES: I just don't have any reason to
23 believe what they are saying is truthful.

24 THE COURT: They have seen yours; you haven't
03:41:45 25 seen theirs?

1 MR. YEGPARIAN: They have seen it. They have
2 it.

3 MR. JOHNSON: It has been on the exhibit list
4 for three months.

03:41:50 5 THE COURT: One at a time, please.

6 MR. ANDRES: So now they're objecting to a
7 document --

8 THE COURT: Whatever it is, that is what I am
9 here for, to get it settled. Figure it out.

03:41:58 10 MR. ANDRES: Thank you, Your Honor.

11 THE COURT: Now, what was the ruling at all?
12 Where are we? You will use it if you need it?

13 MR. ANDRES: Yes, Your Honor.

14 THE COURT: All right.

03:42:08 15 MR. ANDRES: Thank you very much, Your Honor.

16 THE COURT: All right. Oh, hang on a second.
17 Okay.

18 You will find this when I get back in,
19 making these rulings. One thing you may want to have to
03:42:27 20 work on together, I will allow you to do the voir dire. I
21 think, you know, historically, I think 50 percent of the
22 cases in the U.S., the attorneys don't get to ask any
23 questions on voir dire. And I do it occasionally. But I
24 think you have been around the horn enough that you will
03:42:49 25 hear me later, I will allow you to do some voir dire in

1 this case.

2 But what I need, because I am going to
3 explain this to the jury when I make my initial -- what is
4 it? I don't do -- I do part of the voir dire but not much.

03:43:07 5 Mostly what I'll do is tell them what this case is about.

6 So I need a joint -- a joint, what is it, submission --

7 If you can't do it jointly, I will take it
8 individually. But I will need it before the case begins.

9 -- as to what the judge ought to tell the
03:43:28 10 jury, what this case is about. This is a case concerning
11 the oil and gas industry, and give them a little background
12 to the case.

13 No, I am not going to put the money
14 judgment, the money amount in there. Okay? But I have yet
03:43:46 15 to rule on that. I want to see what you have got to say on
16 that.

17 But just a joint statement of the case, a
18 ballpark statement of the case, so they know what's coming.
19 And then I'll turn it over to you, and I'm be asking you
03:44:01 20 how much time you want to voir dire the jury. But, I
21 guess, there aren't any younger lawyers around here really
22 relatively anyhow.

23 But, a study was done by the Federal
24 Judicial Center a number of years ago, and they came out
03:44:17 25 within about 50 percent of the federal courts, you don't

1 get to ask one question at all. And I have done that only
2 on things like taking a voir dire on sex trafficking cases
3 or something like that, where it's so emotional, and so
4 forth, I would rather do the questioning, and the lawyers
03:44:36 5 appreciate me asking some of the loaded questions.

6 A lot of stuff -- I do that in civil and
7 criminal cases, and I will get to that in a moment when I
8 give you how I try a case.

9 All right. Let's see.

03:44:57 10 MR. BLOCK: Your Honor --

11 THE COURT: All right.

12 MR. BLOCK: -- just a couple of very small
13 things, if I may.

14 THE COURT: Go on. You might as well do it
03:45:02 15 because we will take a break. I will come back and tell
16 you how I have ruled on all these things, and tell you how
17 I try a case, and then let you get ready for Thursday.

18 MR. BLOCK: I don't know that we have a
19 statement on the record, or what the Court's practice is.
03:45:13 20 But there are a number of agreed motions in limine in the
21 pretrial order submitted as agreed. Are we to understand
22 those are granted by agreement?

23 THE COURT: That is correct.

24 MR. BLOCK: Okay. We have been discussing with
03:45:24 25 the other side trial exchanges, disclosures for what's

1 coming up, and there's an agreement to disclose the night
2 before which witnesses will be called, or expect to be
3 called and in what order.

4 We have also proposed a similar
03:45:38 5 night-before exchange for opening demonstratives, closing
6 demonstratives, and any demonstratives to be used with
7 witnesses. I understand there is an objection to that
8 exchange, and I just thought this might be an opportunity
9 to get clarity from Your Honor.

03:45:50 10 THE COURT: Thank you.

11 MR. JOHNSON: Sure. Well, the proposal that
12 was made was to exchange full slide decks without the
13 ability to shuffle order and those things. One is just a
14 practical concern, the proposals to exchange them at 7:30
03:46:05 15 the night before. I mean, I am still working on my opening
16 statement for the morning of.

17 My practice has been -- local practice,
18 what I have usually done, is shown it. If we're talking
19 about a true demonstrative like a graphic, a picture, then
03:46:17 20 show that to the other side before we start openings. If
21 there is objections, we can take it up. I am fine with
22 doing that.

23 But I don't -- I have never exchanged my
24 entire slide deck for the opening with talking points and
03:46:29 25 what the evidence will show. That is just a preview of how

1 we are going to try the case. And I have never, frankly,
2 exchanged anything -- usually don't exchange anything
3 before closing because that is argument.

03:46:43 4 MR. BLOCK: Well, Your Honor, I can't speak to
5 local practice, although I can call on Mr. Rice to do so if
6 that is necessary. Our point is simply -- and my
7 experience in federal courts across the country -- has been
8 to exchange these things.

03:46:55 9 It is impossible to unring the bell. So
10 if there is something -- and we are not asking for your
11 script, your talking points, but if there is a graphic that
12 you want to show or an animation, and we haven't had a
13 chance to look at it until it is shown to the jury, we are
14 then in the situation of having to think about whether to
03:47:09 15 interrupt an opening or closing.

16 It is much cleaner, in our view, to simply
17 do the exchange. If there are any problems, we can raise
18 them before Your Honor, and then hopefully we have smooth
19 presentations to the jury. I don't know if local practice
03:47:20 20 is something to address.

21 MR. RICE: Judge, our practice has always been
22 to exchange opening demonstratives and whatever evidence is
23 going to be shown to the jury the night before. And some
24 lawyers on the other side shuffle them up, play those
03:47:33 25 games. That's fine.

1 But we ought to be able to see what
2 they're going to show the jury before they show the jury in
3 opening, or else we are going to risk being -- getting up
4 on our feet and objecting, and interrupting their opening.
03:47:47 5 We have always done that.

6 MR. BLOCK: We did make the proposal that it
7 should be done without shuffling, and we're prepared to do
8 that.

9 THE COURT: What do you need any graphics? You
03:47:56 10 are talking about voir dire?

11 MR. JOHNSON: No, they are talking about
12 opening statements and closings.

13 THE COURT: Oh, openings statements.

14 MR. BLOCK: Openings, closings and experts.

03:48:06 15 THE COURT: Experts?

16 MR. BLOCK: Correct, Your Honor. If there is a
17 plan to use a slide deck with an expert, which is common,
18 at least in my practice, to help the expert -- where the
19 expert wants to give a presentation on their opinions.

03:48:17 20 Those are things we would disclose in advance to exchange
21 any objections as well.

22 MR. JOHNSON: I just want to get an
23 understanding of what we are talking about.

24 THE COURT: Yeah.

03:48:26 25 MR. JOHNSON: I mean, if we're talking about --

1 if there are documents already in evidence, and I am going
2 to show those in opening --

3 THE COURT: All right.

4 MR. JOHNSON: -- I need not have to exchange
5 those.

03:48:37

6 If we are talking about a true graphic or
7 a movie or something, then I agree. It has been my
8 practice to exchange those, but we're starting -- my
9 understanding is we're starting at 10:30 in the morning.

03:48:48

10 We can do that in the morning. 7:30, I am still going to
11 be working on this stuff. That is just a practical
12 consideration.

13 I haven't made a demonstrative for this
14 case. We are two days away from trial.

03:49:00

15 THE COURT: Uh-huh.

16 MR. JOHNSON: I am not going to interrupt
17 everything so I can try to exchange something -- or I don't
18 want to, I should say, so I can exchange something and give
19 a preview before. If they have an objection the morning
20 of, we can take it up.

03:49:12

21 THE COURT: All right. I have an instruction
22 on this, but follow it up.

23 MR. BLOCK: I will just say that I don't think
24 we have an objection if they are going to show a document
25 through Trial Director or on the camera, of a document

03:49:23

1 that -- to which there is no objection or that Your Honor
2 has said is in evidence. This really is about the slide.
3 If there is some surprise in the slide or something we
4 consider prejudicial, we would like an opportunity to raise
03:49:39 5 that with Your Honor.

6 We had proposed the night before as an
7 orderly way so that we could tell Your Honor if there is a
8 dispute, we would like to address something before it
9 happens. If that's not possible, we can be flexible about
03:49:50 10 the timing.

11 THE COURT: Opening statement is nothing more
12 than what you anticipate the evidence will show.

13 MR. JOHNSON: Exactly. Exactly.

14 MR. BLOCK: That is our understanding, Your
03:49:59 15 Honor.

16 THE COURT: So you're going to see I don't
17 entertain long opening statements. In other words, you
18 give them an overview. This is what we're going to show.
19 And you get right into trial. I have done that in civil
03:50:09 20 and criminal cases. So I'll see -- eventually. We are
21 going to do that when I come back in as to what the time
22 frame is that you want for the voir dire, what the time
23 frame is that you want for opening statements, but my
24 feeling is you get right into trial.

03:50:29 25 And then what about both counsel, if you

1 have an easel up there and you start writing on it? How do
2 you know what is coming?

3 MR. BLOCK: Well, Your Honor, I think that is a
4 different issue, and counsel is free to mark things up as
03:50:42 5 they go live. Our real concern is these cooked-up
6 graphics, and, look, that is probably not Mr. Johnson's
7 practice, in which case we won't have an issue. We just
8 simply think the orderly way forward and it sounds like it
9 is consistent with local practice.

03:50:55 10 THE COURT: Well, let's do it this way. You
11 don't want an instruction to the jury saying that this is
12 what they say it is going to be, if they don't.

13 MR. JOHNSON: Exactly.

14 THE COURT: I'll either strike it or you
03:51:09 15 disregard it, but that's what he said the evidence will
16 show, but you eventually are the factfinders.

17 MR. JOHNSON: And my concern is I keep hearing
18 references to the slide deck. I mean, the slide deck is
19 the outline for my opening. It won't necessarily include
03:51:22 20 demonstratives. It will include bullet points, talking
21 points, what I think the evidence will show. I don't think
22 there is any need or expectation to exchange that before we
23 get up and make our opening statements.

24 THE COURT: All right. I'll make a ruling on
03:51:40 25 that when I get back. Advanced graphics, correct? That is

1 really what we're looking at, correct?

2 MR. BLOCK: That's -- that's right, Your Honor.

3 If it is helpful, I can give you the language of the
4 exchange. We've tried to protect some of these things that

03:51:52 5 we have proposed but --

6 THE COURT: No. No. I'll just make a ruling
7 on it. Everybody, hopefully, will follow it.

8 MR. BLOCK: Very good, Your Honor.

9 THE COURT: What else you want to talk about as
03:52:01 10 far as housekeeping goes?

11 MR. JOHNSON: I had -- I'm sorry, Your Honor, I
12 didn't mean to cut you off.

13 THE COURT: Go on.

14 MR. JOHNSON: You mentioned voir dire. I know
03:52:07 15 at the last pretrial you mentioned that you would do some
16 voir dire.

17 THE COURT: Absolutely.

18 MR. JOHNSON: And then I believe --

19 THE COURT: All I do is give the burden of
03:52:16 20 proof and so forth --

21 MR. JOHNSON: Okay.

22 THE COURT: -- and the even compare the
23 difference before they even know it's a civil or criminal
24 case --

03:52:22 25 MR. JOHNSON: Okay.

1 THE COURT: -- the difference with the
2 preponderance of the evidence, and so forth.

3 MR. JOHNSON: Now, the parties did, per the
4 pretrial order, submit joint questions. Do you intend to
5 ask those or --

03:52:31

6 THE COURT: No.

7 MR. JOHNSON: -- will that be the parties?
8 Okay.

9 THE COURT: No, not going to touch those.

03:52:35

10 Because any objection in there, I need to know about it.
11 But I am not getting involved in your voir dire.

12 MR. JOHNSON: Okay.

13 THE COURT: I mean, somewhere -- I will tell
14 you this: Don't blow a panel on me, because you blow a
15 panel -- it's not like any big, big city. These jurors
16 come from fourteen counties.

03:52:48

17 MR. JOHNSON: Understood.

18 THE COURT: And I can't -- in state court I
19 could call -- if they have a blown panel, I'd call over
20 central jury room and then a bunch of folks come over.

03:53:00

21 MR. JOHNSON: Yeah, takes a while to drive in
22 from Columbus.

23 THE COURT: That is right.

24 MR. ROUHANDEH: So just to be clear, Your

03:53:08

25 Honor --

1 THE COURT: Yes, sir.

2 MR. ROUHANDEH: -- when there are questions
3 about do you know any of the parties? Do you know any of
4 the counsel?

03:53:12 5 THE COURT: No, that's up to you.

6 MR. ROUHANDEH: Do you expect us to do that?

7 THE COURT: That's up to you.

8 MR. ROUHANDEH: Thank you, Your Honor.

9 THE COURT: In other words, you're about -- and
03:53:19 10 then when they get -- attorneys get up there, also -- well,
11 I will tell you about it. You can -- free to move around.
12 You don't have to ask permission to approach a witness in
13 my court. You can use the podium. You can sit where you
14 are like they do in state court.

03:53:35 15 I remember going around the country and to
16 New York especially, and they said you could sit while
17 examining a witness. I was what? No, our -- our state
18 people do that. There's no need -- if you want a podium,
19 it is going to be right there. Be aiming toward, you know,
03:53:51 20 all the -- the witness. And the same thing, when you voir
21 dire, we will have a podium, if you're more comfortable. I
22 don't mind you walking up and back. You can take a lapel
23 mic and you can walk up in front of the jury.

24 All right. I am going to go out and rule
03:54:06 25 on a whole number of these things. Okay? I am going to

1 hold as of now, as far as the money matters go, just as to
2 how much that 300 million is, okay? I am going to issue an
3 oral -- it's a motion in limine. You are not to go into it
4 until I make a ruling about it. Okay?

03:54:29

5 So if it takes time or if I read your
6 submissions and make a ruling on it, fine. I don't want
7 anybody to go into that money factor until I have decided.
8 Okay? That includes in the voir dire and the opening,
9 unless I have already made a ruling on whether or not the

03:54:45

10 money factor can come in.

11 MR. ROUHANDEH: Thank you, Your Honor.

12 MR. BLOCK: With apologies, I have one more
13 housekeeping thing for now or later --

14 THE COURT: Sure. What is it?

03:54:54

15 MR. BLOCK: -- if I can do it now. Your Honor,
16 we're interested in using at trial certain admissions in
17 discovery responses of the other side. So three
18 categories: One are admissions that are in the pretrial
19 order; another is responses to our request for admission;
20 and then the third category would be two documents on our
21 exhibit list which are the latest last amended responses to
22 certain interrogatories.

03:55:07

23 The question is simply how -- if Your
24 Honor has a practice with respect to how those are
25 presented to the jury. We would be prepared to simply read

03:55:19

1 them, but if Your Honor has --

2 THE COURT: Usually it's a read, unless there
3 is an objection to it. I need to know it ahead of time.

4 But usually when you reach the appropriate time, you can

03:55:32 5 see by stipulation or by agreement, this is uncontested or
6 this is an admitted fact that you get in, and then I may
7 just instruct -- what the jury is instructed, you know, to
8 follow that; in other words, as an agreement between the
9 parties as to the evidence and then move on.

03:55:54 10 MR. BLOCK: Okay. And so do we -- is it
11 incumbent on us as proponent to obtain a ruling from Your
12 Honor on the objections that are written in the
13 interrogatories or will you just wait and see if there's an
14 objection when we present them?

03:56:04 15 THE COURT: No. We need to hash that out first
16 before you start.

17 MR. BLOCK: Your Honor, I have here copies of
18 two sets of interrogatory responses and the RFA response,
19 as well as an excerpt from the joint pretrial order. I
03:56:18 20 think the excerpt has no objections, because we agreed
21 going into the pretrial order --

22 THE COURT: I don't need to see it.

23 So how many things do you disagree with?

24 MR. BLOCK: So it's -- Your Honor, it's three
03:56:28 25 documents. Each of the --

1 THE COURT: Hold it. Didn't I rule on the
2 documents?

3 MR. BLOCK: No, this is separate from the --
4 the high priority objections that we raised. This is -- I
03:56:39 5 merely thought of it, Your Honor, as a housekeeping matter
6 in terms of how we want them raised. So these are
7 interrogatory responses that have the sort of boilerplate.
8 We object for this reason and that reason, and we respond
9 as follows: We would like to use those responses, and if
03:56:53 10 we need to get a ruling from Your Honor on the objections
11 that are written in the responses, we're happy to do that
12 now or at your convenience.

13 THE COURT: I'm not sure I follow. I mean, I
14 have done this a long time. I don't remember anything like
03:57:04 15 this. What? How does it work?

16 MR. BLOCK: Well, my proposal, Your Honor, it
17 would be that we would read these to the jury. I think
18 that they are --

19 THE COURT: If you had somebody on the stand?

03:57:17 20 MR. BLOCK: They could be done on the stand,
21 Your Honor, or --

22 THE COURT: Well, you are going to have it
23 enter into and through who?

24 MR. BLOCK: Well, there is a couple of ways to
03:57:25 25 do that, Your Honor, if you want them done. They're

1 Devon -- they're Devon's admissions. So if you want it
2 done through a witness, we could do it. I would have to
3 think about which of their witnesses we would say you're an
4 employee of Devon. You understand there's this
03:57:37 5 interrogatory response? If that is your preference, we're
6 happy to do it that way. But these are -- they're
7 admissions. So, for example, facts stated in the pretrial
8 order that we think we should be able to argue and submit
9 to the jury.

03:57:52 10 THE COURT: That's a new one on me. I mean,
11 really. It really is. You don't get it in through
12 anybody?

13 MR. BLOCK: I think there are ways -- it
14 depends a little bit on Your Honor's rulings on the motions
03:58:09 15 in limine and the witnesses exactly through whom we would
16 get these in.

17 THE COURT: I think you need to get it through
18 a witness, and this is -- you said, isn't it true that to a
19 certain an interrogatory we did this, and then once you put
03:58:24 20 on evidence to counteract that. I mean...

21 MR. BLOCK: We are happy to do it that way. Of
22 course, these are statements of Devon, but they are
23 verified by a witness. So I think we can proceed that way.

24 THE COURT: Well, you're going to have it by --
03:58:33 25 get it through somebody and that way we can go question and

1 answer, and I will rule on it at that time.

2 Now, you got a bunch of other documents
3 and we will talk about that, that I've ruled -- I will rule
4 on a number of evidentiary matters that you have in here,
03:58:49 5 and all of the motions in limine and so forth, except for
6 the money amount. Okay?

7 MR. BLOCK: With respect to documents,
8 witnesses, and deposition designations, my anticipation,
9 Your Honor, is that your rulings on the motions in limine
03:59:05 10 will substantially narrow --

11 THE COURT: Okay.

12 MR. BLOCK: -- the disputes.

13 THE COURT: All right. All right. Give me --
14 let's see. What time is it now? It's 4:00. I am thinking
03:59:16 15 about 4:30. We will wrap it up at 4:30, basically come
16 out -- and also, let's see. Let me get this. Here it is,
17 yeah. Jury selection. I got my jury selection notes. We
18 will go down that. And think of any other housekeeping
19 matters that come up. Okay?

03:59:33 20 Let's see, for the next few days, get the
21 jury underway. On Thursday, I got about -- right through
22 the noon hour, which is a little later because we start at
23 10:30. I got a sentencing and a re-arraignment. That is
24 about it on Thursday. So won't be any interruption of the
04:00:02 25 jury trial.

1 All right. I'll come out. I'm just going
2 to go down and read them and that is it. You are
3 experienced lawyers. You can move around it. So I've got
4 all these things. I'll go make a ruling on them, come out
04:00:17 5 and read it out, and then do the final, I'll say.

6 All right. See you in about a half hour.

7 MR. ROUHANDEH: Thank you, Your Honor.

8 MR. JOHNSON: Thank you, Your Honor.

9 (Proceedings recessed from 4:00 to 4:36.)

04:00:26 10 THE LAW CLERK: All rise.

11 THE COURT: Thank you. Be seated.

12 All right. Here are the rulings. Don't
13 forget on the motions in limine you can always approach the
14 bench. On one of these I am making a ruling where I assume
04:36:23 15 you will approach the bench. I have it noted here. Okay?

16 Plaintiff's motions in limine: Number 2,
17 overruled; Number 3 -- Number 3, granted by agreement as in
18 the record; Number 4, overruled.

19 Defendant's Motion in Limine Number 1,
04:36:46 20 overruled; Number 2, overruled; Number 3, granted; Number
21 4, granted; Number 5, granted with a note: Approach the
22 bench when you get close to that area and let me take
23 another look at it.

24 I mean, I am saying that in all of the --
04:37:12 25 in all motions in limine but especially that one. I want

1 to hold off on that for a while at least.

2 Number 6, overruled; Number 7 is
3 withdrawn; Number 8, overruled; Number 9, granted by
4 agreement.

04:37:30 5 Then we have plaintiff's motion to strike
6 testimony. All right. As to Document 88, that's
7 Cubbage -- what is it, Cubbage and Smith, overruled. Let's
8 see. Plaintiff's motion to permit live Zoom, that's
9 granted. They can use the Zoom.

04:37:54 10 Defendant's notice of high priority
11 objections: The objections, okay, as to Exhibits 42 and
12 43, overruled. As to Numbers 2 and 3, I am holding that
13 until ruling on those short memos, okay? So I'm just
14 holding on that. And I gave you the admonition: Don't go
04:38:23 15 into any of the money involved until I read it and make a
16 ruling.

17 Number 4, as to the redacted portion being
18 objected to, it's overruled. And let's see, Number 5, no
19 ruling now. That's rebuttal. If you use it for rebuttal
04:38:46 20 purposes, and I'll look at it at that time. Plaintiff's,
21 what is it? What is it -- what is the -- Plaintiff's 16,
22 Exhibit 16, the notes, potential witness, that's overruled.
23 And if you want as partial, you can get rid of the
24 telephone number, but I understand he has left the firm a
04:39:10 25 long time ago. So, in effect, it's overruled. They can

1 leave it in.

2 Okay. Now, as to the graphics -- hang on
3 a second. I have one more set of rulings as to all the
4 other objectives.

04:39:48 5 Show them to the opposing party, but you
6 don't have to do it the night before. Just show it to
7 them, and if there is a problem, let me know. Okay?
8 Just -- as you do with anything that you use, at least show
9 it to the opposing party, aim it toward me so I can see it,
04:40:04 10 and just go ahead with it. Don't try your case to the jury
11 on graphics. You need time to talk to them about it.

12 Now, I have used this -- this happened to
13 me in the *Stanford* case. One of the parties had something
14 like 1,000 -- there was -- they had a total of about 1,000.
04:40:25 15 It was that large, what is it, Ponzi scheme. I think I
16 mentioned that to you. I think you probably know. If not,
17 it was second only to Madoff. Madoff pled guilty. The
18 largest financial fraud ever tried in the United States to
19 a jury. It was over \$10 billion. And I remember the
04:40:47 20 plaintiffs -- the defense lawyers said that he has
21 objection to all of those exhibits, all of them. All of
22 them.

23 So what I did was this, and I am going to
24 do it in this case, okay? Aside from the ones I have ruled
04:41:01 25 on, all exhibits of the plaintiff and the defendant are

1 conditionally admitted into evidence. Now, let me tell you
2 about that. Conditionally admitted. Nothing comes in out
3 of all of those other exhibits unless you use it at trial.

4 If so, when you identify it, go right on
04:41:27 5 and start examining a witness. If there is an objection,
6 I'll rule on it. If there is no objection, let it go and
7 it's in evidence. Okay?

8 Does anybody have a question about that?
9 In other words, when I say conditionally in, that will save
04:41:45 10 me from ruling and you from making -- you know, say we have
11 no objection. If -- now, you have got to use it at trial
12 to get it in. It can't be just in this stack. And then
13 just go use it unless someone says we have an objection to
14 it, and then I'll consider it like basically we do in state
04:42:06 15 court. But you did it here, you got rulings on some of
16 this stuff you need it on.

17 All right. I am going to go down now. I
18 will allow you to do voir dire. Some -- now, I will permit
19 your own voir dire. I have done these now over the years,
04:42:25 20 and after I tell them preponderance of the evidence and
21 what that's all about, how much time does the plaintiff
22 want to voir dire this jury after I get through with the
23 initial stuff?

24 MR. JOHNSON: I would like an hour.

04:42:43 25 THE COURT: What about the defense,

1 realistically?

2 MR. ROUHANDEH: Your Honor, when we were here
3 in July, I think Your Honor had indicated that perhaps 35
4 minutes was appropriate. Obviously, if plaintiffs are
04:42:53 5 going to get an hour, we can take an hour, but I am not
6 sure --

7 THE COURT: Did I say 35?

8 MR. ROUHANDEH: Well, I proposed 35, and you
9 seemed to think that was --

04:43:04 10 THE COURT: What's your position? An hour?

11 MR. JOHNSON: My position, at least as I
12 understood it at that time, was that the Court was going to
13 conduct some voir dire. So at that point 35 minutes, fine.
14 If the Court is not going to conduct voir dire, then I
04:43:16 15 would like an hour.

16 THE COURT: Well, have you seen the information
17 sheets?

18 MR. JOHNSON: I have, Your Honor.

19 THE COURT: You see what it is? How broad that
04:43:22 20 is?

21 MR. JOHNSON: I am not saying I'll use the
22 whole hour.

23 THE COURT: Well, I am going to give you -- if
24 you say 35 minutes, I will give you 35 minutes each. You
04:43:30 25 don't need that amount of time. Just tell them what it is

1 about and see if anybody can't sit. Okay?

2 I mean, and I am not going to check your
3 questions. If there is anything objectionable, I need to
4 know ahead. Aside from that, you can pick a jury. You've
04:43:47 5 done it before.

6 MR. ROUHANDEH: Thank you, Your Honor.

7 MR. JOHNSON: Thank you, Your Honor.

8 THE COURT: All right. Now, the -- there will
9 be a podium right about where that right hand, what is it,
04:43:58 10 swinging door is, but all of the jurors will be on the
11 right-hand side. What do we -- what do we have? We
12 have -- we got to call for jurors.

13 THE CASE MANAGER: 24, Judge.

14 THE COURT: 24?

04:44:16 15 THE CASE MANAGER: Yes.

16 THE COURT: All right. Because each of the --
17 each -- I seat eight jurors, and each of the counsel have
18 three strikes. So initially Number 14 is in the panel.
19 Eight, plus three, plus three. And we are striking -- we
04:44:33 20 are bringing in 24?

21 THE CASE MANAGER: Yes, Judge.

22 THE COURT: All right. So we have ten -- no.
23 I sit eight. I sit eight jurors, and in a civil case they
24 all deliberate. There are no alternates, as you know, in a
04:44:46 25 civil jury trial in federal court, unless you go over 12

1 and then you have to have 12, but I seat 8. There is four
2 in the front row, four in the back row.

3 Use the podium if you are more
4 comfortable. If you want to move up and down in front of
04:45:05 5 the jury panel, ask us, we will give you a lapel microphone
6 so you can move. I need all your questions in advance. I
7 think we did that.

8 Don't argue a case to one juror. I know
9 you do, I think, both state and federal practice. As an
04:45:22 10 example, in a criminal case, well, ladies and gentlemen,
11 how many people think we got a real problem here with
12 drugs? Okay. And so, all right, Juror Number 4, what do
13 you think about that? You talk to him, and then you talk
14 to the next one.

04:45:39 15 The way I -- or is there anybody here who
16 feels there are too many civil cases that encumber the
17 court? I allow it this way. I get a misunderstanding of
18 what I just said as far as the first go.

19 Okay. Or I say, don't argue a case to
04:45:58 20 one. Say well, such and such, what do you think? You
21 think there is too much litigation in oil and gas here?
22 And find out, and say, well, I am going to pick on
23 Number 17 and ask him the same thing.

24 Ask a question like this: Just because
04:46:13 25 this case involves the oil and gas industry, is there

1 anybody here who think they would have a problem sitting on
2 this jury? You get hands to go up. You can go right for
3 them and start asking questions.

4 But don't pick one and then pick another.

04:46:30 5 For instance, as far as civil cases go, all right, instead
6 of saying anybody feel too many cases are, you know, taking
7 up too much time? Is there anybody here who belongs to an
8 organization such as Citizens Against Lawsuit Abuse, who
9 feel this might not be the best case for you? They raise
04:46:51 10 their hands. You can go right for it.

11 Like I do with a drug case, very often, if
12 people say that they would rather not talk about it because
13 you've got people coming up, they have lost children to
14 overdoses of drugs, they couldn't do it. They don't want
04:47:07 15 to talk there. I will say, we will talk to you later, sir,
16 on my time instead of your time. So you keep asking them,
17 and every time I say we'll talk to you later -- for
18 instance, maybe somebody got killed on an offshore rig. He
19 said, no. He says, I couldn't do this. It's too much of
04:47:28 20 the family, we lost a family member. I say, okay, sir, we
21 will talk to you up here, and then you can go on with your
22 voir dire.

23 Ask those general questions first, but
24 this is where some lawyers don't catch it. That doesn't
04:47:43 25 prohibit you from asking any other question that you see on

1 that juror form. Don't ask: Where do you work? How long
2 have you been there, and what's your job there? You could
3 go to question number -- because that's all on there.

4 You could say, all right, what do you do
04:48:00 5 as an executor -- as an executive assistant with Brown &
6 Root? Or something like that. So it moves quickly.

7 You will have those juror forms 30 minutes
8 before the jurors come up. So bring a highlighter with you
9 and you start highlighting them at that time.

04:48:18 10 Yeah, and if you feel a juror gets out of
11 line or is about to pollute the pool, turn around and ask
12 me: Can we talk to him later? More than likely I'll be
13 behind your back, seeing where it goes and say we'll talk
14 to Number 7 later, so you can just keep moving.

04:48:38 15 Time allotted for voir dire, we got that
16 done. I will ask the catchall question at the end of voir
17 dire. That's after all of the challenges for cause I have
18 decided up here at the bench, I'll ask is -- or I may ask
19 it earlier, but you have heard the questions the lawyers
04:49:00 20 asked. We see your answers on the sheet. If there is any
21 other reason you feel you cannot serve on this jury, raise
22 your hand.

23 So don't ask that. Very often said, well,
24 I have asked you a bunch of questions. Is there any
04:49:13 25 questions you have? No. I don't do that.

1 They'll answer your questions and then
2 I'll give them that opportunity, if there is anything else
3 the lawyers haven't asked or I haven't asked or is not on
4 your form that you need to talk to me about, come on up.

04:49:30 5 That's where you have people say we just remembered that we
6 have an anniversary trip and we have -- you know, we got to
7 catch our ship tomorrow. I mean, all sorts of things.

8 Let's see. We got the juror
9 questionnaires with the highlighter. There are no
04:49:48 10 alternates in civil cases, so all eight will deliberate.

11 I always ask this. It's a unanimous
12 verdict, as you know, in civil and criminal cases in
13 federal court. I ask the defendant, do you want to go with
14 a less than unanimous verdict or a unanimous verdict?

04:50:08 15 MR. ROUHANDEH: Unanimous verdict.

16 THE COURT: That's why I always ask the
17 defense. Always. And one time we said you need to go less
18 than unanimous, and the plaintiff is looking like this. He
19 didn't say anything. So I think we went to a seven to one
04:50:20 20 or something like that.

21 Now, if we have jurors left over that have
22 not been accounted for, in other words, all the ones we
23 struck and there are still extras left, I will give you the
24 option of getting more jury strikes. That is something I
04:50:39 25 have done all my years, and it even surprises them in

1 criminal cases. Let's say you got 14 people here, six more
2 were struck for cause, and what is that? Then you have got
3 five jurors, you know, who are left after that. Well, that
4 means that each -- you can get two more strikes if you want
5 to.

04:51:00

6 So very often you will look at who is left
7 or whatever, but if so, I will give you that option. Both
8 sides would have to agree, otherwise it is three and three.

9 Opening statement, how much time do you

04:51:15 10 want for opening statement?

11 MR. JOHNSON: Hour.

12 THE COURT: It's coming out of your time,
13 remember that.

14 MR. ROUHANDEH: I'll just say 30 minutes.

04:51:26 15 THE COURT: I'll give you 30 minutes. I don't
16 think you need 30 minutes. Give them an overview of your
17 case, and let's get going. And that is a lot for me, even
18 in the major cases. If you want 30 minutes, I'll give
19 you -- if you don't take it, the time doesn't go down, but
04:51:42 20 I don't think you need more than 30 minutes.

21 I have done this. I have seen it, how
22 fast it goes. Just get to your case, call your witnesses,
23 and that's what counts.

24 MR. ROUHANDEH: Thank you, Your Honor.

04:51:54 25 THE COURT: You may approach a witness without

1 asking permission, and when you question a -- what is it --
2 what is it -- yeah, no need to -- approach a witness
3 without permission, just go on up.

4 Attorneys may sit, stand, or use the
04:52:13 5 podium, whatever you're most comfortable doing when you're
6 examining a witness.

7 Also, as far as the timing order goes, I
8 will keep time on this clock. All right? I think you have
9 seen that. At the end of each day you will get this sheet.
04:52:32 10 It will tell you exactly how much time you have used, and
11 you can figure out the time you have left. This is one
12 from some example on 2020, and you can just take a look. I
13 am going to leave it up here. So you can --

14 Tell you what, why don't you run an extra
04:52:51 15 copy of this, a color copy.

16 I need this, but that way one side can
17 look, and the other side can look at a separate one, but I
18 need them up here, and you will get this at the end of each
19 day.

04:53:07 20 And, for instance, if somebody makes an
21 objection it is going to run on the other side, unless it
22 is a real long objection, then you will see me press the
23 button and that is on your time. And it has worked well
24 for me over the years.

04:53:20 25 What else you got?

1 MR. JOHNSON: Can I get one clarification on
2 voir dire, Your Honor?

3 THE COURT: Absolutely.

4 MR. JOHNSON: We submitted joint questions, and
04:53:28 5 I think you just commented, and I didn't quite follow, that
6 we have taken care of that. You do not need to see all the
7 questions we're going to ask in voir dire?

8 THE COURT: That's correct.

9 MR. JOHNSON: Okay.

04:53:40 10 THE COURT: That's correct. If anybody
11 objects, because you can't put the juror -- you can object
12 only -- you can't put the juror in the position of anyone
13 on trial, you know, at that time.

14 So, I mean, I am careful to do that
04:53:54 15 because when I do a criminal voir dire, it's about
16 presumption of innocence, and I always say not you,
17 somebody you know perhaps gets arrested overseas, and they
18 have got -- in a third-world country and they have got to
19 prove themselves innocent instead of being presumed guilty.

04:54:14 20 Even at that, I don't put the juror in the
21 position of a party in this case.

22 Yes, sir.

23 MR. JOHNSON: And I cannot remember from
24 my last trial with you, but do you let us voir dire on the
04:54:24 25 burden of proof or no?

1 THE COURT: Oh, yeah.

2 MR. JOHNSON: Okay. Great.

3 THE COURT: Yeah.

4 MR. JOHNSON: Thank you.

04:54:32 5 MR. BLOCK: Your Honor --

6 THE COURT: I give the one -- I give the
7 example about the difference between the balance of what do
8 you call it, the -- the scales of justice.

9 MR. JOHNSON: Scales of justice.

04:54:46 10 THE COURT: Yes, sir.

11 MR. ANDRES: Your Honor, just one clarification
12 on the rulings relating to the evidence, the demand letter
13 and the response.

14 THE COURT: Which one is that? What number?

04:54:57 15 MR. ANDRES: That is Exhibit 42 and 43.

16 THE COURT: Give me one second.

17 MR. ANDRES: It should be in the binders.

18 THE COURT: No, I am looking over here. The
19 exhibits, right?

04:55:08 20 MR. ANDRES: Yeah.

21 THE COURT: Here it is, 42 and 43. Yeah, what
22 about it?

23 MR. ANDRES: So with respect to 43, which is
24 the letter from Davis Polk, Mr. Rouhandeh, to the extent

04:55:28 25 the Court is going to let that in, we would ask that the

1 reference to Davis Polk and to Mr. Rouhandeh both be
2 redacted. They are not relevant to this case in any way.

3 THE COURT: Who are those guys?

4 MR. ANDRES: Well, Mr. Rouhandeh is sitting
04:55:43 5 right here.

6 THE COURT: Oh, all right.

7 MR. ROUHANDEH: And my firm.

8 MR. ANDRES: And there is nothing about the
9 firm, and we all work at Davis Polk, so there is no reason
04:55:51 10 to inject anything about Davis Polk into this case. I
11 can't imagine why the plaintiffs would want to do that, but
12 it is prejudicial. We can't defend ourselves by taking the
13 witness stand.

14 MR. YEGPARIAN: We have the Court's ruling.

04:56:05 15 The relevance of that is that it's an opinion from the
16 lawyer, and this is why Devon sent their letter from Devon
17 and did not have their outside counsel do it. Chevron made
18 its own bed when they had that lawyer send that letter.

19 MR. ANDRES: That does not answer -- excuse me.

04:56:28 20 MR. YEGPARIAN: And the Court has already ruled
21 on this. Why are we getting into it again?

22 THE COURT: Hold it.

23 MR. ANDRES: We are making a second
24 application --

04:56:35 25 THE COURT: Hold it. I don't mind getting into

1 it. That's what we're here for on the day before.

2 Yes, sir.

3 MR. JOHNSON: I would suggest -- I would be
4 fine with redacting Mr. Rouhandeh's name since he is
04:56:44 5 sitting at counsel table, but I think Davis Polk should
6 remain. I mean, they're --

7 THE COURT: Because I asked that question, too.
8 One was sent by the company letterhead, I believe.

9 MR. JOHNSON: Yeah. Yeah.

04:56:53 10 THE COURT: And one was responded to by the
11 lawyer.

12 MR. JOHNSON: Right. And it is not just some
13 random Joe Schmoe with a shingle out in Beaumont that sent
14 it. It was a lawyer that represents the company, that sent
04:57:06 15 it as an agent for the company. But I am fine with
16 redacting Mr. Rouhandeh's name.

17 MR. ANDRES: There is no distinction between
18 the two. The reason to take Mr. Rouhandeh's name off the
19 letter is because he is sitting here. There are four
04:57:19 20 lawyers from Davis Polk sitting here as well. There is
21 nothing possibly relevant about the fact that it came from
22 Davis Polk.

23 THE COURT: What do you want to do, knock out
24 the whole letter?

04:57:30 25 MR. ANDRES: No, I -- you have already ruled

1 that the letter is coming in. We understand that.

2 THE COURT: Yeah.

3 MR. ANDRES: We simply want to redact the name
4 of our firm and the lawyer at the firm whose name is on it.
04:57:40 5 There is no relevance to that.

6 MR. JOHNSON: The maker of the statement is
7 relevant, and I am willing to redact Mr. Rouhandeh's name.

8 THE COURT: Okay. I understand.

9 MR. JOHNSON: Okay.

04:57:48 10 THE COURT: I understand. I'll grant it as to
11 the redaction of counsel. Aside from that, it's overruled.
12 I mean, your request is overruled.

13 MR. ANDRES: Thank you, Your Honor.

14 THE COURT: Yes, sir. What else you got? Now
04:58:01 15 is the time.

16 MR. BLOCK: Just quickly, Your Honor, when
17 you're hearing objections to evidence during live
18 proceedings, do you generally take argument at sidebar --

19 THE COURT: No. No.

04:58:10 20 MR. BLOCK: -- or live before the jury?

21 THE COURT: You get up and give me what's your
22 objection.

23 MR. BLOCK: And then argument would be in the
24 jury's hearing, Your Honor?

04:58:16 25 THE COURT: Absolutely.

1 MR. BLOCK: Thank you, Your Honor.

2 THE COURT: Unless it is something so hot that
3 I'll excuse the jury. I rarely do.

4 MR. BLOCK: Thank you, Your Honor.

04:58:30 5 THE COURT: What else? Are we all talked out,
6 all of us?

7 MR. JOHNSON: One thing.

8 THE COURT: Yes, sir.

9 MR. JOHNSON: This is about scheduling.

04:58:34 10 THE COURT: Yes, sir.

11 MR. JOHNSON: So there is a pervasion of cancer
12 through this case. Mr. Whaling is undergoing cancer
13 treatment. He will be our witness, 10:30. I have been
14 undergoing cancer treatment. Mr. Hicks, who is going to
04:58:49 15 testify, has had cancer.

16 I would just make a motion in limine that
17 mentioning of those things, to try to, you know, induce
18 sympathy of the jury or otherwise be impermissible. I
19 would request a motion in limine on that.

04:59:01 20 THE COURT: Any objection?

21 MR. ROUHANDEH: No. No, Your Honor.

22 THE COURT: Okay. Then, that's so ordered as a
23 limine motion in this case. Thank you.

24 Anything else?

04:59:12 25 And I just ask that you take the same

1 seats -- although, will you have corporate rep here?

2 MR. JOHNSON: We will. Yes.

3 THE COURT: Okay. You are going to have a
4 corporate rep?

04:59:21 5 MR. ROUHANDEH: Yes, Your Honor.

6 THE COURT: Okay. They can -- I just want -- I
7 don't want to get out of that sequence, okay. So if so, I
8 want to adjust this.

9 Are you going to switch off examining
04:59:34 10 different witnesses? Which is fine with me.

11 MR. ROUHANDEH: Yes, sir.

12 THE COURT: Okay. I have no problem with that.
13 Just one do each witness, okay?

14 MR. JOHNSON: Yeah. One rider, one rein.

04:59:48 15 THE COURT: Now -- all right. If you can
16 settle the case over the next day or so, do so.

17 If you can't, we are getting that jury in
18 here, and away we go. So unless I hear otherwise, I
19 take --

04:59:59 20 You have got two sheets there? Okay. One
21 of each. Just hand one to each side. I need them back.
22 Okay?

23 But, Counsel, you want to come get one of
24 these?

05:00:11 25 MR. YEGPARIAN: Thank you.

1 THE COURT: All right. Thank you.

2 MR. ROUHANDEH: To be clear, Your Honor --

3 MR. ANDRES: 10:30 Wednesday morning?

4 THE COURT: 10:30 Thursday.

05:00:21

5 MR. YEGPARIAN: Your Honor --

6 THE COURT: Yes.

7 MR. YEGPARIAN: -- do you need these back?

8 THE COURT: Yes.

9 MR. BLOCK: I'll take a photo of it.

05:00:28

10 THE COURT: Well, all right.

11 MR. JOHNSON: The world we're living in.

12 THE COURT: Yeah, sure is. Just to give you
13 some idea, you will get that sheet every day, as if -- have
14 you taken a look?

05:00:39

15 MR. BLOCK: I have. I took a photo without
16 asking your permission. I want to make sure that was okay
17 with Your Honor.

18 THE COURT: Everything -- there is no privacy
19 left anymore.

20 (Proceedings recessed at 5:00 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2

3 I, Kathleen K. Miller, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.

6

7 DATE: September 6, 2023 /s/ Kathleen K. Miller

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Kathleen K. Miller, RPR, RMR, CRR

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